CHATTEL EXEMPTIONS
FROM
WRITS OF EXECUTION

WALTER S. SCOTT, LL.D.

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Writs of Execution

IN

Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon Territory

BY

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PREFACE

The fact that my booklet on Homesteads has, I understand, achieved a success that surpasses what were in my view expectations of too roseate a hue, emboldens me to offer to my fellow practitioners this companion volume on Chattel Exemptions. The book pretends to no higher rank than that of the former booklet, viz., a faithful compilation of all Canadian authority on the subject, together with such U.S.A. authority as has seemed to me of utility. The subject matter, however, is of an interest which is less local.

Should the work be lucky enough to meet with an approval throughout Canada similar to that which fell to the lot of its companion in Alberta, Manitoba and Saskatchewan, I shall consider myself indeed fortunate.

As before, I would ask for correction or suggestion, in order that future editions of the work, should they ever be called for, may be as complete as possible.

I have to thank my friend Mr. H. S. Coulter, Barrister, of Edmonton, my former pupil in the law, for much valuable work in the preparation of the booklet for the press.

WALTER S. SCOTT.

31 Gariepy Block, Edmonton,
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Chattel Exemptions from Execution

WHETHER CLAIM OF EXEMPTION IS NECESSARY OR NOT?

Property exempt from execution is of two sorts: (a) Property which is exempt without the necessity of any choice on the part of the debtor, e.g., the bedding in ordinary use by the debtor and his family in Ontario or family portraits in Quebec; (b) property which is not exempt until choice has been made by the debtor or some other person, e.g., twelve volumes of books in Manitoba.

Where, for the ascertainment of exemptions, a choice is necessary it is sometimes held that the right to exemption is a privilege which must be exercised by the debtor, no duty or right to make selection being in the Sheriff, while in other jurisdictions the view is that the Sheriff should make a vicarious selection.

Where the right of exemption is regarded as a personal privilege, all property will be *prima facie* subject to execution, and the Sheriff need have no fear of an action for damages until claim has been made by the execution debtor.

It has been decided to be a personal privilege in British Columbia (Roy v. Fortin, 9 W.W.R. 407; see also

Johnson v. Harris, 1 B.C.R., Pt. 1, 93; Sehl v. Humphreys, 1 B.C.R., Pt. 2, 257; Pilling v. Stewart, 4 B.C.R. 94; Hudson's Bay Co. v. Hazlitt, 4 B.C.R. 450; in re Ley, 7 B.C.R. 94; Yorkshire v. Cooper, 10 B.C.R. 65, and Dickenson v. Robertson, 11 B.C.R. 155), where the debtor must make his claim within two days after the seizure or after notice thereof, whichever is the longer time. In Quebec where the Code allows the debtor to "select and withdraw" certain property, the bailiff, where no choice has been made by the debtor, should seize all the effects, leaving it to the debtor to exercise his rights before the sale. (Filion v. Chabot, 9 Quebec (Sup. Ct.) 327.)

In Alberta, Saskatchewan and Manitoba it has been decided that where a debtor refuses or neglects to make a selection the Sheriff may do so for him and seize the balance. (In re Demaurez, 5 Terr. L.R. 84; Cloutier v. Georgeson, 13 Man. L.R. 1, and Robin Hood v. Maple Leaf, 9 W.W.R. 1453.) The Executions Act (Man.), s. 40 provides that no Sheriff charged with the execution of any writ of execution . . . . shall seize or take in execution any goods, chattels or effects declared by the Act to be free from seizure under writs of execution.

In Field v. Hart, 22 O.A.R. 449, a chattel mortgagee was held entitled to claim exempt furniture without special claim by the execution debtor and it was referred to the Clerk of the County Court to ascertain and report which of the goods in question in the interpleader issue were in fact goods exempt from seizure, thus taking the question out of the hands of the Sheriff.

It would appear that, generally speaking, the debtor may, where no choice has been made by the Sheriff, make a choice within a reasonable time, probably at any time

prior to the conversion of the property by sale by the Sheriff. Otherwise, he would be held to have irrevocably waived his right of selection.

It would appear from the cases mentioned *supra* and a collation of the U.S.A. cases that, speaking generally, it is not necessary for the debtor to make a choice of exempt articles in Canada, yet in the United States the making of a claim and a choice is usually necessary, though in a few of the States the right of exemption must be respected.

A defendant made an assignment to the plaintiff pursuant to the Creditors' Trust Deeds Act of all her property and effects, which may be seized and sold or attached under executions or the Execution Act or attachment.

She delivered possession of her property without making any claim to exemptions under the provisions of the Homestead Act. The plaintiff subsequently lent certain of the goods assigned to the defendant and defendant refused to return them, claiming them as an exemption which, but for her ignorance of the law, she would have made at the time of the assignment. It was held that, if she had wished to resort to her right of exemption, she should have done so at the time of delivery of possession to the assignee, or at all events at a reasonable time therafter. (Roy v. Fortin, 9 W.W.R. 407.)

The dissenting judgment of McPhillips, J. A., in the last mentioned case is, in part, as follows:

"It now becomes necessary to consider some of the decisions in this Province dealing with the question of exemptions, and it would not appear to me that to hold that the appellant is still entitled to insist upon her right, is, in any way, concluded by authority—in any case there is no authority which is binding upon this Court. Pilling v. Stewart (1895), 4 B.C.R. 94, was a decision of Drake, J. (an able and painstaking judge whose judgments will always have

the most careful attention) and it was a case where an assignment for the benefit of creditors and exemption thereunder was considered and it was there held (and the statute law was the same then as now) that the $500 exemption under the Act is not an absolute right, but a privilege or option to be effectuated only by claiming it within a reasonable time in regard to the specific goods seizable or which may have been seized under execution, and does not apply to the proceeds of the goods after sale and conversion into money. At p. 99, the learned judge said: 'In my opinion if the debtor neglects to notify the assignee who has lawfully taken possession of the goods assigned he cannot after conversion make any claim under the statute unless the acts of the assignee have been of such a nature as to prevent a claim being put in before conversion.'

"In the present case there has been no conversion and the acts of the assignee are not capable of being approved, and to still admit of the exemption to the appellant will not be running counter to this decision. Yorkshire Guarantee & Securities Corporation v. Cooper (1903), 10 B.C.R. 65, is a decision of the full court, but it was not a case of an assignment for the benefit of creditors, but Pilling v. Stewart, *supra*, was referred to and Drake, J., at p. 72, said:

" 'The question is, was a claim made before the property was converted by sheriff's sale: Pilling v. Stewart (1895), 4 B.C.R. 94. Here a claim was made for exemption not only to the sheriff verbally before the seizure but also after the seizure. The sheriff knew perfectly well that a claim for exemption meant a claim for whatever the law allows.'

"No injury has occurred in the present case; there has been no sale of the goods in question, and the assignee knew at the outset from the assignment itself that the exemption was claimed. Drake, J., also at the same page (72) said:

" 'The object is to give the debtor something to go on with after the judgment against such debtor has been realized out of his estate in excess of $500. In a country like this it is a very necessary thing that a person should not be thrown upon his friends for the purpose of his support, and this provides a means of obviating it.'

"That the appellant should have signed the writing to return the goods adds a strange feature to the situation. I have adverted to this, and in my opinion, it should be given no weight whatever and, in this connection, I will quote what my brother Irving had to say in Yorkshire v. Cooper, *supra*, where it was urged that the claim could not be set up as the claimant to the exemption had contended that the vessel was not his, but that of a company. At p. 73 he said:

" 'In my opinion, a man who is of an excitable character, insisting upon an absurd proposition of law, should not lose his rights. And that is the way I regard the statement that he insists upon making, viz.: that the ship is the property of the Glenora Steamship Co.'

"The appellant in the present case, upon the facts, should not lose her rights. My brother Martin, in the same case, at p. 73, said:

" 'I concur with what my learned brothers have said in disposing of this matter, that it should be decided upon the construction of our own statute; and I concur with them also that our judgment should be based upon the application of the statute to the peculiar requirements of this country, to which it is well suited.'

"In Dickenson v. Robertson (1905), 11 B.C.R. 155, Hunter, C. J., said at p. 156:

" 'It is idle to say that there was a seizure before the 15th; you might just as well talk of a seizure by telephone.

" 'As to the question of the debtor's right of exemption in spite of the cases cited I strongly incline to think that it

is absolute, and not a mere privilege to be asserted within the two days on peril of the loss of everything. The effect of the statute is that the debtor may select the $500 worth within the two days, but if he does not the sheriff is to leave $500 worth behind. Suppose the debtor too ill to think of exemptions, was it intended that he should be left destitute, or does the law regard life more than the debt. Or suppose he is absent and his notice goes astray, must he go home and find not even a stove to cook his food on? I need not, however, come to any final conclusion as to this as I have no doubt that the claim was put in within the time allowed. But as the sheriff contends that the goods claimed as exempt have been undervalued, the matter will stand over to allow the proper proceedings to be taken to settle that question, and to enable the debtor to answer the sheriff's affidavit on the point of waiver. As to whether the right can or cannot be waived I express no opinion."

"Upon the whole, therefore, I am of the opinion that the right to exemption upon the facts of the present case is absolute and that the right still exists, and even were I wrong in this, and it were a privilege only, that privilege could be exercised in a reasonable time, or at any time before conversion, and that reasonable time would be when affected with knowledge of the right to the exemption and the need to make a selection, and, as in this case, the appellant at the time of the taking possession of the goods in question was unaware of the right to the exemption the giving of the writing to return the goods cannot avail to establish estoppel or waiver; and that upon the facts the claim made by the appellant was within a reasonable time."

A right of exemption from execution is a privilege exercisable at the option of the debtor and to take effect must be claimed. (Johnson v. Harris, 1 B.C.R., Pt. 1, 93.)

The execution debtor was entitled, as an exemption under the Homestead Act, to $500 out of $1,000 realized by the sheriff on the sale of a steamship, the only exigible personalty of the debtor. Semble, notice of claim of exemption is necessary. (Yorkshire Guarantee & Securities Corporation v. Cooper, 10 B.C.R. 65.)

P. & Y., partners, on the 26th of July, 1894, executed a deed of assignment to S., for the benefit of their creditors, of "all their and each of their personal estate which might be seized and sold under execution (save and except the household furniture of Agnes York), and all their and each of their real estate," and S. immediately entered into possession thereof, and afterwards converted the same into money. Subsequently, on December 28th, 1894, P. claimed from S. $500 of the proceeds as an exemption from execution to which he was entitled under the Homestead Act (R.S.B.C. 1888, c. 57), Amendment Act, 1890, sec. 2, and implied reservation in the deed. Held that the $500 exemption from execution under the Act is not an absolute right, but a privilege or option to be effectuated only by claiming it within a reasonable time in regard to the specific goods seizable, or which have been seized under execution, and does not apply to the proceeds of the goods after sale and conversion into money. (Pilling v. Stewart, 4 B.C.R. 94.)

The option is one which the debtor must exercise in a reasonable time after assignment or execution, and it applies only to goods and chattels capable of seizure or which have been seized; it does not apply to the proceeds of a subsequent conversion. The intention of the Act was that a debtor should not be stripped of all he possessed in the world, but should be left a sufficiency to enable him to start again. (S.C.)

In execution of a judgment against a carter the bailiff left with him a horse and a carriage and seized all his other

effects, which were sold. After the sale the bailiff seized another carriage which had been left with another person for repairs, and of which he knew nothing at the time of the first seizure. The debtor then made a declaration that he would choose and keep the carriage last seized, and offered to return the one formerly left with him to be sold in its place. The bailiff having refused this offer, the debtor signified to his creditor an opposition *afin d'annuler*. It was held that the debtor, although he had stated to the bailiff in regard to the carriage left at the first seizure that he had nothing but that to enable him to gain a living, had not exercised the choice accorded to him by statute, and was entitled to make such choice when the second carriage was seized. The signature of the debtor to the *proces verbal* does not establish a choice by him, and if there is no choice the bailiff should seize all the effects, leaving it to the vendor debtor to exercise his rights before the sale, but at his own expense. (Filion v. Chabot, Que., 9 (Sup. Ct.) 327.)

The sheriff is bound to leave the debtor what is exempt, the debtor having the right, if he chooses to exercise it, to a choice from a greater quantity of the same kind of articles as are exempt. If he does not see fit to make a choice, it is probable he would not be heard to complain that the sheriff had not made the choice most favorable to the debtor. (Per McGuire, J., In re Demaurez, 5 Terr. L.R. 84.)

When a debtor merchant makes an assignment in the form prescribed by The Assignments Act, R.S.M., c. 7, of all his stock-in-trade and personal property, etc., liable to seizure under execution to a trustee for creditors, the assignee has a right to select such articles as would be exempt under The Executions Act, R.S.M., c. 53, sec. 43, in the absence of a selection by the debtor; and, if he appropriates and sells only a portion of the property coming under the head of any class of the statutory exemptions and

leaves to the debtor a sufficient quantity of the same kind of property to reach the prescribed value, he will not be liable to an action for the value or the proceeds of the portion sold. (Cloutier v. Georgeson, 13 Man. L.R. 1.)

Where property is necessarily exempt, the sheriff should assume that the right to exemption will be claimed, and a sheriff who makes a levy or sale of such property should be regarded as a wrong-doer, and held answerable as such, unless the debtor has, by his express waiver or by acts of acquiescence equivalent thereto, estopped himself from insisting on his right of exemption. (Cole v. Breen, 21 Ill. 104.)

The sheriff is by law and the inaction of the debtor made his agent for the purpose of selecting the property to be held as exempt, and after such selection the remainder may be sold. (Slaughter v. De Tiney, 10 Ind. 103.)

Where the defendant removes or conceals some of the chattels so as to avoid a levy on them, this is an irrevocable election to claim as exemptions the property so removed or concealed. (Ross v. Hannah, 18 Ala. 125.)

Where there are several articles out of which the debtor has a right to select a certain number he must on being informed of the levy or within a reasonable time thereafter point out to the officer not only those which he selects as exempt, but also those which may remain and tender the latter to the officer, or at least give him an opportunity to levy thereon. (Keybers v. McComber, 67 Cal. 395.)

Where an assignment was made of property, "except such as is exempt from levy or sale under execution," but no demand was made for exemption until several weeks after the assignment, a waiver of the right to select exempt property was inferred. (Lemont v. Wooton, 59 N.W. 456.)

II. DUTY OF SHERIFF TO NOTIFY DEBTOR OF RIGHT TO EXEMPTION AND TO DEMAND SELECTION.

Quaere **as to whether the Sheriff should notify the debtor of his rights and ask him to make a selection, where a selection is necessary.**

A sheriff has no right to seize any of the tools or necessaries used by the debtor in the practice of his trade, however great their value, until he first calls on the debtor to make choice of articles to the value of $500, which he desires to claim as exempt. (Robin Hood v. Maple Leaf, 9 W.W.R. 1453, per Mathers, C.J. K.B.)

In the case of the sheriff or other officer acting under process of execution the duty is cast upon the officer by statute to allow the debtor to make the selection, and, in my opinion, he can only discharge that duty by apprising the debtor of this statutory right, and then, if the debtor does not exercise it, that would constitute a sufficient estoppel and not to apprise the debtor would be a breach of duty upon his part. (Per McPhillips, J. A., in Roy v. Fortin, *supra.*)

It has been held that the duty of the sheriff is to notify the debtor of his rights of exemption, and also to require a person to make his selection at the time of the levy. (See Cook v. Scott, 6 Ill. 333.)

The proper course to be pursued by an officer on levying a writ is to insist that the defendant, if then present, exercise his right of selection. Where the defendant has not thus or in some other manner been called upon to act, he retains his right of selection in ordinary circumstances up to the time of the sale, on tendering to the officer the property remaining in the defendant's hands subject to execution. (Harrington v. Smith, 20 Am. St. Rep.. 272.)

III. PARTNERSHIPS, LIMITED COMPANIES, CORPORATIONS.

In Manitoba a partnership firm cannot claim several exemptions for each partner, but only one exemption for the firm out of the partnership property (R.S.M. 1913, c. 66, s. 32). In Alberta is it settled by McKinnon v. Beals (1917), 1 W.W.R. 1328, that the statutory exemptions have no application to a partnership. The question has been raised, but not determined in Pilling v. Stewart, 4 B.C.R. 94. The *ratio decidendi* of McKinnon v. Beals would seem to extend the inability to claim an exemption to limited companies and other corporations. In some jurisdictions, however, definition clauses would exclude such extension. The better rule, where an execution is levied against partnership assets under an execution against the individual, seems to be that laid down by the United States cases cited *infra*.

If the partnership is dissolved before the lien of the judgment against which the exemption is claimed attaches and the dissolution has been *bona fide*, each partner may claim an exemption in the partnership property which has been set off to him. (Worman v. Giddey, 30 Mich. 151.)

To hold that one against whom an officer has an execution is entitled to have a certain amount of property, of which he has the entire title, exempted therefrom, and at the same time to hold that he could have no exemptions out of such property, if he was not the sole owner, is to do violence to the evident intention of the statute. The different text writers upon the subject, though most of them have fallen into the error of grouping cases of judgments against a partnership with those against the individual members thereof, have come to the conclusion that upon principle,

exemption should be allowed to the individual partner when the levy is under a judgment against him. (Dennis v. Cass, 48 Am. St. Rep. 880.)

The courts which have held that exemptions could not be had out of partnership property, when levied upon under an execution against the individual partner, have done so in the face of the statutes for the reason that the rule announced by them is more convenient of execution than would be one which allowed such exemption. (Thompson: Homesteads and Exemptions, 216.)

(As to Aliens, see Scott on Homesteads, 52.)

IV. RIGHT OF TRANSFEREE, MORTGAGEE, OR PLEDGEE TO CLAIM EXEMPTION.

In jurisdictions where the privilege is regarded as purely personal, it seems to follow that the claim to exemption cannot be made by an assignee, mortgagee or pledgee. In Manitoba this principle was adopted in Young v. Short, 3 Man. L.R. 302, but has been since rejected in Robin Hood v. Maple Leaf, 9 W.W.R. 1453. (See also Bates v. Cannon, 18 Man. L.R. 7.) It has not been followed in Baker v. Gillum, 9 W.L.R. 436 (Saskatchewan), nor in Ashcroft v. Hopkins, 2 Alta. L.R. 253 (Alberta); nor in Ontario (see Field v. Hart, 22 O.A.R. 449, and Temperance Insurance Co. v. Coombe, 28 C.L.J. 88.)

To hold, as it is contended, that the mortgagee cannot raise the claim that the property was exempted from seizure under execution at the time he took the mortgage, and that therefore his mortgage is invalid as against execution creditors, would have the effect of preventing the home-

steader from raising money on his homestead as a security; as the proposed lender would hesitate under such circumstances to lend. I am of opinion, therefore, that the mortgagee has a right to raise the question that the property is not liable to seizure under the execution in so far as his mortgage is concerned. (Per Wetmore, C.J., in Baker v. Gillum, 9 W.L.R. 436.)

In Cox v. Schack, 14 Man L.R. 174, the assignor of the plaintiff, an assignee for the benefit of creditors had in effect mortgaged goods to the defendant by a mortgage which was held bad as against creditors. It was doubtful upon the wording of the assignment whether the debtor had reserved any exemptions to which he would be entitled under s.s. (f) of s. 43 of The Executions Act, R.S.M., c. 53, viz.: "The tools . . . . . and necessaries used by the judgment debtor in the practice of his trade, profession or occupation, to the value of five hundred dollars," within which description the articles came, and it was not shown that the debtor had ever claimed any of them from the assignee or asked to have any of them set aside as exempt, or that he had not got out of other articles of his estate all his exemptions under that s.s.; and the articles were not shown to have depreciated in value. It was held that the defendant could not claim the benefit of any such exemption, even if it was reserved by the debtor in the assignment.

Young v. Short *supra* was decided on the authority of Mickes v. Towsley, 1 Cow. 114; Smith v. Hill, 22 Barb. 656, and Earl v. Camp, 16 Wend. 562, which laid down the rule that the privilege should be claimed by the debtor or by someone acting for him by authority express or implied, a view that is taken in many of the American cases, thus, it has been held that a pledgee or mortgagee or other person to whom property has been transferred cannot make a valid claim for exemption, especially if the debtor has had an op-

portunity to make the claim and has not done so. (Terry v. Wilson, 63 Mo. 493; Sherrible v. Sheffee, 33 Am. St. Rep. 63.)

If the debtor can transfer at will his exempt property it logically follows that the title of the transferee in the property cannot be assailed or impaired by the creditor of the transferee. This is the rule followed in many jurisdictions. In other jurisdictions the rule that the purchaser of exempt property stands in the place of the debtor and can assert the latter's right to exemption has been held to apply only to property specifically exempt, and not to property, which defendant has a right to select in lieu of the specified property exempt under the statute; and there are a number of jurisdictions which hold that as the right of the debtor to his exemption is personal to him, exempt property loses the quality, which the law attached to it in the hands of the debtor, as soon as it is transferred and the vendee is not allowed to assert the exemption claim, but holds the property subject to the debts of his transferrer. (18 Cyc. 1448.)

See further Scott on Homesteads, p. 28, for similar rules with regard to homesteads.

V. MORTGAGE OF EXEMPT AND NON-EXEMPT PROPERTY.

A judgment debtor has a *prima facie* right, it would seem, that his non-exempt property should be exhausted before recourse is had to his exempt property by a person who has a charge on both properties.

Where exempt property and non-exempt property were covered by the same mortgage it was held that the creditor had no right to sell the exempt property, provided that the non-exempt property was sufficient to satisfy his lien. (Sanders v. Phillips, 62 Vt. 331.)

It has been held that where a mortgage covers both exempt and non-exempt property, the mortgagor is entitled both as against the mortgagee and an execution creditor to demand that the mortgagee first exhaust the non-exempt property, before resorting to the exempt, but this is a right which the mortgagor must assert in proper time for himself and, further, is a right which would not be enforced where either from the act or omission of the mortgagor, it would be inequitable to enforce it. (Miller v. McCarty, 28 Am. St. Rep., 375 and 50 N.W. 235.)

VI. EXECUTION UNDER JUDGMENT FOR PRICE

In Ontario, Manitoba, British Columbia, Alberta, Saskatchewan, the Yukon Territory, Nova Scotia and Quebec there is no exemption, except in the case of things which may be classified as prime necessities, and which vary slightly in the different jurisdictions. See statutory provisions *infra*, when the article is proposed to be taken under an execution founded upon a judgment for its price.

In such cases the burden is on the party claiming the exemption to show that the goods in respect of which exemption is claimed were not seized "in satisfaction of a debt contracted for or in respect of such identical goods." (In re Sharp, 5 B.C.R. 117.)

It seems consistent with principle that the assignee of a vendor should be allowed to exercise the privilege of his assignor.

Goods generally exempted from seizure under execution by virtue of s. 29 of the Execution Act, R.S.M., 1902, c. 58, but withdrawn from such exemption by s. 36 of the Act, when the purchase price of them is the subject of the judgment proceeded upon, are subject to seizure although

the judgment has been recovered only upon a bill of exchange for the price accepted by the judgment debtor. (Canada Law Book Co. v. A.B., 7 W.L.R. 363, 17 Man. L.R. 345.)

A judgment was obtained by a law publishing company for the balance of a long current account, some of the payments having been made for particular books and others generally on account. It was held by Beck, J., that the subject matter of the judgment was the residue of the account after the elimination of the specific payments for the specific items, as a current account with some general credits against it, and that account as an entirety or rather the articles specified in it and not the mere balance of the account of such articles as might be found by the application of the rules as to appropriation of payments not to have been paid for, or in other words, that all books in the account except those specifically paid for were liable to seizure under the plaintiff's execution. (Canada Law Book Co. v. Fieldhouse, 12 W.L.R. 396.)

Lien notes were given at an auction sale for exempt property and after the sale the sheriff seized these notes in the hands of the auctioneer. It was held that such notes did not come within the Exemption Ordinance. (Jones v. Jesse, 10 W.L.R. 627.)

In Shenkman v. Steinbook, 7 W.W.R. 1051, goods were not wholly paid for and the balance of the price was secured by a chattel mortgage, which was subsequently released and a cheque taken for the balance. It was held in an action on the cheque that the simple contract debt had become merged in a higher security effected by the chattel mortgage and that upon the release of the chattel mortgage the right to sue for the price of the goods as such had not revived and that therefore the unpaid for goods could not be taken in execution.

Goods sold at an auction were bought in lots, one lot by one purchaser and another by another and the purchasers joined in giving promissory notes in payment. The vendor of the goods sued on both notes in one action and recovered judgment. Under the execution the sheriff seized the goods purchased by one of the purchasers, and it was held that s. 4 of the Exemption Ordinance could not be held to operate so as to render the goods in question liable to be sold under execution under the circumstances of the case.

"In so deciding," says Johnstone, J., "I do not wish to be understood as holding that in no circumstances can goods the price of which form part of the subject matter of the judgment, be seized under execution, but I do go as far as to say that where, as here, there is a joint liability on the part of the defendants of an uncertain extent as to the amount to which each is indebted, as principal debtor or as surety, the provision of the Ordinance here sought to be enforced cannot be extended in such a case." (McBride v. Brooks, 16 W.L.R. 271.)

The acceptance by the vendor of a note has been held not to affect his right to enforce his claim to the purchase money. The debt is nevertheless for purchase money within the meaning of the statute. (18 Cyc. 1391.)

There have, however, been decisions the other way. (See Vye v. McNeill, 3 B.C.R. 24, where the debtor was allowed to claim his exemptions out of the proceeds of the sale of a horse, although the horse was sold to satisfy a promissory note given in payment therefor, and see Shenkman v. Steinbook, 7 W.W.R. 1051, where a vendor was held bound by the exemption in an action on a cheque given for the purchase price.)

If a plaintiff reduces his claim to a judgment and then sues on the judgment, it is held in some American jurisdictions that he is no longer within the exception to the

exemption law. Nevertheless, within other jurisdictions a more rational and just view is taken of this exception to the exemption laws.

Whenever justice requires it judgments will be generally construed not as a new debt, but as an old debt in a new form. (Garside v. Coleby, 72 N.H. 544.)

It has been held that where goods bought from different vendors have been so intermixed that they cannot be separated, the defendant is entitled to his exemption against both vendors, since neither could prove that the goods seized by him were sold by him to the defendant.

The plaintiff may be able to recover the purchase price where the debt has changed its form as where a note has been taken or security taken for a debt. (Rogers v. Brackett, 34 Minn 279; Roberts v. McGur, 82 Michigan 221.)

It seems probable that the assignee of a vendor is also entitled to this right. (State v. Orahood, 27 Mo. App. 396; Houlehan v. Rassler, 73 Wis. 557.) In that case one lent $80.00 to another to be used by him for the purchase of a team of horses, and the money was so used, and it was held that the lender of the money was entitled to recover the same by execution notwithstanding the exemption.

The words of the statute in that case were: "No property exempt by the provisions of this statute shall be exempt from execution issued upon a judgment in an action brought by any person for the recovery of the whole or any part of the purchase money of the same property."

A judgment is not for the purchase money unless it is against the purchaser and is based upon the contract made between the vendor and the vendee. Hence a surety for a purchase price who has been compelled to pay cannot seize property exempt from execution upon recovering judgment against the purchaser. (Smith v. Slade, 57 Barb. 637.)

It has been held in Hickox v. Fay, 36 Barb. 9, that where other items of indebtedness are included the right to take exempt property is waived.

VII. PERSONAL PROPERTY, GOODS AND CHATTELS

In British Columbia the exemption is of "goods and chattels" to the value of $500. Choses-in-action do not fall within the exemption, (Hudson's Bay Co. v Hazlett, 4 B.C.R. 450.) Chattels ordinarily used in the debtor's occupation to the value of $100 are exempt in Ontario inclusively with tools and implements, so also in Nova Scotia to the value of $30.00.

In Hudson's Bay Co. v. Hazlett *supra*, Davie, C.J., says: "The process of attachment by a garnishing or receiving order is not a process under which the debt would be seized or sold, and, therefore, the exemption does not apply," and McCreight, J., adds: "In my opinion the meaning to be applied to the words 'goods and chattels' is that to be taken from common parlance. The test is whether the thing is capable of larceny, i.e., of being physically seized and taken away."

Book debts are not within the exemption of the following provision of the Homestead Act, R.S.B.C. 1888, c. 57, sec. 10: "The following personal property shall be exempt from forced seizure and sale by any process at law or in equity; that is to say, the goods and chattels of any debtor . . . to the value of $500," as not being within the description of personal property capable of seizure, or capable of being dealt with conformably to the provisions of the Act relating to the mode of claiming the exemption. (Hudson's Bay Co. v. Hazlett, 4 B.C.R. 450.)

An execution debtor placed certain buildings on land, the buildings being of wood resting on loose stone founda-

tions, to which they were not affixed, nor were the foundations let into the earth, but the earth had been levelled to make the foundations level and a cellar had been dug under the building. A judgment creditor seized the buildings, and the owner of the fee simple claimed them as part of the freehold. It was held that the buildings in question not being affixed to the freehold and there being no evidence that it was intended that they should be a part of it, the buildings were the property of the debtor and liable to seizure. (Hamilton v. Chisholm, 2 Sask. L.R. 227.)

In Bink Kee v. Yick Chong (10 W.L.R. 110) the building rested on rock placed on the soil and the chimneys were supported by poles resting on rock. The front stoop was supported on wooden posts and was formerly attached to a wooden block sidewalk. It was held that the house was a part of the freehold and not a chattel, and that the fact that it could be removed without materially injuring the freehold was immaterial.

As to exemptions of a house as a part of the homestead, apart from any question as to whether it is a chattel or not, see Scott on Homesteads.

The term "personal property" is generally held to include choses in action, whether in statutes making an absolute exemption of a certain amount of property or in statutes allowing the debtor to select a certain amount of property, either generally or in lieu of certain articles specifically exempt. Under other statutes the courts have found it impossible to have the term connote a "chose in action." (18 Cyc. 1445.)

The debtor when he is by statute allowed as exempt personal property not exceeding a designated value may hold free from levy under execution, fees due him as a justice of the peace, or choses in action, or moneys deposited

in a bank or stock in corporations, or any other species of property. (Freeman on Executions, 1280.)

VIII. TOOLS, IMPLEMENTS, NECESSARIES
IX. TRADE, PROFESSION, OCCUPATION, CALLING

The tools and necessary implements to the extent of two hundred dollars used by the execution debtor in the practice of his trade or profession (Alberta, Saskatchewan and Yukon Territory $500); the tools, agricultural implements and necessaries used by the debtor in the practice of his trade, profession or occupation, to the value of $500 (Manitoba); tools and implements of, or chattels ordinarily used in the debtor's occupation to the value of $100 (Ontario); tools of the trade or calling of the debtor to the value of $100, inclusively with apparel, bedding and kitchen utensils (New Brunswick); tools and implements of, or chattels ordinarily used in the debtor's occupation to the value of $30 (Nova Scotia); the tools and implements of the trade of the debtor (Prince Edward Island and Newfoundland), and the tools and implements used in trade to the value of $200 (Quebec), are exempt from execution.

The word "tools" in the ordinary acceptation and use of the word, in most cases, will readily indicate what the parties meant, such as the tools of a carpenter or of a smith. Where not so, whether certain articles are or are not tools is a question for the jury. (Filschie v. Hogg, 35 U.C.Q.B. 94.)

Tools and implements of his trade to the value of £5, s. 47, County Court Act, 1888, include the sewing machine of a sempstress (Churchward v. Johnson, 54 J.P. 326) and the hired cab of a cab-driver (Lavell v. Ritchings, 75 L.J.K.B. 287; [1906] 1 K.B. 480); and if such a chattel be the only

one on the premises belonging to the execution debtor, the exemption extends to it though its value be much in excess of £5,—"to the value of £5" means, that excepted articles to "at least" that value must be left on the premises (per Alverstone, C.J., in Lavell v. Ritchings *supra*, Stroud, p. 576. See, however, in Ontario Executions Act, s. 2 (f), and see Vye v. McNeill, 3 B.C.R. 24.)

We take the word "tool" to mean an instrument of manual operation particularly those used by farmers or mechanics. We think the word implement has a more extensive meaning, including with tools, utensils of domestic use, instruments of trade and husbandry; but both words, we think, exclude the idea of animals. The word "chattel" has a legal, well-defined meaning and is more comprehensive than the other two, and includes animals as well as goods movable and immovable, except such as have the nature of freehold. (Davidson v. Reynolds, 16 U.C.C.P. 140.)

The test to ascertain what a tool is has been suggested to be the capacity of the debtor to use it by his own personal strength or skill without aid or assistance of other machinery or motive power. It seems to be a better test than that afforded by the mere simplicity of construction. (Freeman on Executions, 1213.)

In some jurisdictions the term "tool" as used in exemption statutes includes only those implements of the artisan which are worked by hand or muscular power. It is usually held that the term does not include machinery used in manufacture, particularly when the business is conducted on a large scale. Some of the cases go further and will not include minor machinery even though it is worked by hand or foot power, but other authorities take the other view. (18 Cyc. 1416.) A large threshing machine has been held

not to be a working tool of the farmer. (See Ford v. Johnson, 34 Barb. 364; see also in re Klimp, 63 Am. St. Rep. 69, 39 L.R.A. 340.)

"The first question is whether or not a four-wheeled cab which had been let on hire to a licensed cab-driver, and was being used by him for the purposes of his trade, was an 'implement of his trade' within the meaning of the section. It has been argued that it was not an implement of his trade, because he might have gone elsewhere and hired another cab with which to ply his trade. It may be that he could have done so, but it does not follow that the cab was not within the exemption. There is no ground for saying that the section is limited to specific articles which in the circumstances of the particular case are in themselves essential to the trade of the person using them. It is sufficient that the article is used by that person for the purposes of his trade. The case of Fenton v. Logan, 1833, 2 L.J.C.P. 102, is worthy of attention in this connection, in which it was held that a threshing machine in actual use may be an implement of trade for an analogous purpose." (Lavell v. Richings, 75 L.J.K.B. 287.)

Implements are "things of necessary use in any trade or mystery which are implyed in the practice of the said trade, or without which the work cannot be accomplished. And so also for furniture of household with which the house is filled." (Termes de la Ley 347.)

The word "implements" seems to be of a wider meaning than tools and has been held to include a printing press (Bliss v. Vedder, 55 Am. Rep. 237) and the piano of a music teacher (Amend v. Murphy, 69 Ill. 337): "In our opinion the legislature meant by the words "the farming utensils or implements of husbandry of the judgment debtor," such utensils or implements as are needed and used by the farmer in conducting his own farming operations and

it was not intended that all farming machinery which a farmer may own should be exempt, because while he uses it chiefly by renting it out or doing work on other farms for hire, he still uses it to a small extent on his own land. (In re Baldwin 71 Cal. 78; see also Davidson v. Reynolds, 16 U.C.C.P. 140.)

Formerly "trade" was used in the sense of an "art or mystery," e.g., that of a Brewer or a Tailor (Norris v. Staps, Hob. 211), but now "Trade" has the technical meaning of buying and selling (per Willes, J., Harris v. Amery, 35 L.J.C.P. 92; L.R. 1 C.P. 148, see also San Paulo Ry. v. Carter [1896] A.C. 38; Grainger v. Gough [1896] A.C. 325, Pinkerton v. Ross, 33 U.C.Q.B. 508; R. v. Pearson, 1 C.C.C. 337; but for "Trade" as including "manufacture," see Commissioners of Taxation v. Kirk [1900] A.C. 588, and Blanchette v. Levesque, Q.R. 41 S.C. 477.) It is not essential to a trade that the persons carrying it on should make or desire to make a profit. (Re Law Reporting Council, 58 L.J.Q.B. 95, Stroud 2078.)

Under the statutes exempting the tools of a debtor's trade the term trade is frequently, although by no means universally, construed to mean the kind of employment in which mechanics, artisans and handicraftsmen are engaged. (18 Cyc. 1415.)

Where a boiler and some wood were seized by the sheriff under a writ of *fi fa* goods and were claimed by the execution debtor as exempt from seizure under the Yukon Exemptions Ordinance, it was held that both the wood and the boiler were liable to seizure. The latter not being a chattel or necessary implement used by the debtor in the practice of his trade or profession. At the time of the seizure the debtor was working as an ordinary laborer, and the fact that he had used the boiler when he was a miner

in doing work upon his claim and might use it again if he returned to mining or became a prospector, did not make the boiler exempt. (McRae v. Frooks, 17 W.L.R. 287.)

Where a sleigh and a pair of horses had been seized, the value of one of the horses being $75 and the value of the other horse, harness and sleigh being $50, the debtor was permitted to retain the worse horse and the sleigh under the section which exempted tools and implements of or chattels ordinarily used in the debtor's occupation to the value of $60. (Davidson v. Reynolds, 19 U.C.C.P. 140.)

In this case the bailiff had allowed the owner of the horses to drive away with them on the pretence of finding security, but he sold the sleigh and horses. It was held that the driving away with the horses amounted to a selection of them.

The word *"metier"* (trade), used in cl. 10 of art. 598, C.P., must not be taken in too literal a sense; it applies to all manual work done with the object of making a living. Therefore, the effects which garnish the table and dining-room of a boarding-house keeper are instruments used in the exercise of her *metier*, and as such are exempt from seizure under execution. (Boily v. Guillot, 9 Que. P.R. 336.)

A horse used by a butcher to deliver meat to his customers does not fall under the designation of "tools, instruments, or other effects," in cl. 10 of Art. 598, C.P. An opposition to have the animal withdrawn from a seizure of goods under execution, on the ground that the execution debtor used it in the exercise of his trade, should be dismissed upon motion, under Art. 651, C.P. (Lecavalier v. Brunelle, 33 Que. S.C. 145, 9 Que. P.R. 209.)

A gin and grist mill is not exempt as a tool of the debtor's trade. In some instances printing presses and type used by a practical printer have been held to be tools of his trade; in others a different conclusion has been sustained.

In New York it has been held that a watch may, in some instances, be exempt as a working tool or as necessary household furniture. The chair and foot-rest used by a barber have been decided to be exempt as tools of his trade, but it is held otherwise in regard to the horse of a farmer and the library of a lawyer. (Freeman on Executions, 1213.)

The exemption is not limited merely to the tools used by the tradesman with his own hands, but comprises such in character and amount as are necessary to enable him to prosecute his appropriate business in a convenient and usual manner, and the only rule by which it can be restricted is that of good sense and discretion, with reference to the circumstance of each particular case. It would be too narrow a construction of a humane and beneficial statute to deny to tradesmen whose occupation can hardly be prosecuted at all much less to any profitable end without the aid of assistants, as journeymen and apprentices, the necessary means of their employment. (Howard v. Williams, 2 Pick. 83.)

The vehicle of a physician or the bus of an hotelkeeper used in connection with his business are necessary tools and instruments kept for the purpose of carrying on a trade or business. (Van Buren v. Loper, 29 Barb. N.Y. 388; White v. Jemeny, 27 Am. St. Rep. 320.)

Books, or even desks, would be implements of trade of a teacher of languages (per Macdonald, L,J.C., Macpherson v. Drummond, 43 Sc. L.R. 102.)

A threshing machine is an implement of trade, within the conditional exemptions from distress. (Fenton v. Logan, 2 L.J.C.P. 102.)

A pedlar of fruits and vegetables, although he may occasionally buy and sell horses, is not a dealer "trading" in horses within the meaning of Art. 1489 C.C. (Vezina v. Brosseau, Q.R. 30 S.C. 493.)

A person who works on goods belonging to others only is not a trader. (Vermette v. Vermette, Q.R. 30 S.C. 533.)

A baker is not a trader merely because he buys and sells candies as incidental to his business as a baker. (Robinson v. Graham, 16 Man. L.R. 69, 3 W.L.R. 135.)

An executor is not a trader when disposing of his testator's business in the course of winding up the estate. (Paisley v. Nelmes, 9 C.C.C. 413.)

A photographer carries on a trade. (Davidson v. Hannon, 52 Am. St. Rep.)

A newsdealer is a tradesman. (R. v. Anderson, 10 C.C.C. 144.)

Carrying on a school is a calling. (Doe v. Keeling, 1 M. & S. 95; Kempt v. Sober, 1 Sim. N.S. 517; Galway v. Barden, 1899, 1 I.R. 514.)

Tavern-keeping is a calling, an occupation. (Re McCracken and Township of Sherborne, 23 O.L.R. 91.)

X. DEBTOR HAVING MORE THAN ONE TRADE, ETC.

It does not appear to be definitely settled with regard to a man having more than one trade, etc., whether he may claim exemptions cumulatively, or is confined to exemptions in his principal trade, etc., or may elect between his various trades, etc.

A debtor who follows several callings cannot claim exemption from seizure of tools used in his business, unless they are used in his principal calling. (McManamy v. Pelletier, 24 Que. S.C. 127.)

Where a person was by trade a repairer of watches and jeweller it was held that he could not maintain a claim for such tools and implements as were used in connection with a steam laundry run for him by an expert, "though he sometimes tinkered about the laundry," he himself not being by trade a laundry man. (Re Demaurez, 5 Terr. L.R. 84.)

It is said that a debtor by possessing more than one trade cannot cumulatively claim several exemptions created by statute for several distinct employments. Thus, one person cannot claim the exemption of his library and office furniture as a professional man and at the same time have exempted to him tools and implements for the purpose of carrying on his trade or business as a mechanic or miner. The mere fact, however, that a debtor carries on two or more trades or professions at the same time does not deprive him of all exemptions. If he has two separate pursuits, the exempted articles must belong to him in his main or principal business, in other words, to the business in which he is principally engaged. (Jenkins v. McNall, 41 Am. St. Rep. 422.)

In Lockwood v. Younglove, 27 Barb. 505, it was said that the debtor has the right to elect under which trade he will claim.

XI. ABANDONMENT OF TRADE, OCCUPATION, ETC.

Tools, etc., which are exempt, cease to be so when the debtor withdraws from his trade or occupation, without any intention of resuming the same.

Tools and implements ordinarily used in the execution debtor's occupation are no longer exempt from seizure when he changes that occupation to one in which the tools and implements in question are not ordinarily used. An execution creditor was held entitled, therefore, to garnish the price of a baker's wagon sold by the execution debtor a few days after he had abandoned the occupation of baker and entered upon the occupation of a laundryman. (Wright v. Hollingshead, 230 O.A.R. 1.)

The exemptions in clause 6 of s. 2 are of a qualified character. They are tools or implements ordinarily used in the

debtor's occupation. When they cease to answer that description, they cease to be exempt. Though it may seem probable from the wide language of s. 4 that if the debtor dies while following his occupation, his widow becomes entitled to all the exemptions which he might claim. But, if he abandons the occupation for the purpose of enabling him to carry on which, the tools and implements employed in it were exempted, the reasons for protecting them against the claims of his creditors no longer exist, whether he has so abandoned it is a question of fact. Having regard to the object of the statute, passed as it was in ease and favor of the debtor, an abandonment would not necessarily be presumed from a mere temporary cessation of the particular occupation in which the exempt implements had been used, even where it was followed by the actual change of employment. All the surrounding circumstances must be taken into consideration, just as when the question of change of residence is examined in relation to the qualification of a voter. (Per Osler, J. A., in Wright v. Hollingshead, 23 O.A.R. 1.)

The privilege granted the debtor by Art. 598, C.C.P., par. 10, of selecting and withdrawing from seizure "tools and implements and other chattels ordinarily used in his profession, art, or trade, to the value of $200," only exists while the debtor is carrying on his profession, art, or trade. When he has ceased to do so, his right to make a selection is at an end, and, therefore, his creditor can have no right, under Art. 1031, C.C., to make such selection. In any case the right of the creditor, under the last mentioned article, is merely to bring back certain effects to the patrimony of the debtor, for the benefit of his creditors generally, and cannot be exercised for the exclusive benefit of the creditor seeking to avail himself of the provisions of the article. (Stephens v. Toback, 26 Que S.C. 41.)

There can be no necessity for tools, within the meaning of the law, for a debtor who does not intend to use them in his trade. Hence he is not entitled to an exemption after having abandoned his trade nor where he has never exercised the trade for which the tools claimed were designed. (Freeman on Executions, 507.)

The distinction between withdrawing from the pursuit of a particular trade or occupation with the determination never to resume it and a temporary diversion from its prosecution, while engaged in conducting some other business or exercise not intended to be of permanent or durable continuance is clear and definite. To secure himself the privileges and benefits intended to be conferred by the provisions of the statute an artisan is not required to live by his trade without a possible intermission, or the occurrence of any interruption in its pursuit. If, for instance, owing to the unusual stagnation of business, he cannot for a season find remunerative employment in carrying it on, or if from personal infirmity or other intervening impediment it becomes necessary or expedient that he should resort temporarily to some other department of industry to obtain means of supporting himself and his family, he cannot, as long as he entertains an intention to return as soon as circumstances will permit to occupation and employment in his trade, be said to have given up or abandoned it. The tools and implements requisite to carry it on in the usual and ordinary manner in which such business is conducted are in the meantime still things of necessity to him within the meaning of the law. (Caswell v. Keith, 12 Gray 351.)

XII. HOUSEHOLD FURNITURE.

The furniture and household furnishings (Alberta and Saskatchewan), the bed and bedding in common use for the debtor and his family, and also his household furni-

ture and effects (Manitoba), and the furniture, household furnishings, dairy utensils, swine and poultry (Yukon) to the value of $500 are exempt. In the other jurisdictions the articles of furniture exempt are set forth *nominatim.*

"Household furniture" will include all personal chattels that may contribute to the use or convenience of the householder or the ornament of the house, such as Plate (Nicholls v. Osborne, 2 P. Wms. 419; Jesson v. Essington, Pre. Ch. 207), Linen, China (both useful and ornamental) and Pictures, also Prize Medals, Coins or Trinkets, if framed and hung or otherwise disposed for household ornament (Williams' Executors 1048, 1049, 1 Jarman 757 n, Shepheard's Touchstone 447, Cremorne v. Antrobus, 5 Russ. 312; Field v. Peckett, 30 L.J. Ch. 813; Re Londesborough, 50 L.J. Ch. 9); or the clock of the house, if not a fixture (Slanning v. Style, 3 P. Wms. 336; but *quaere* as to a Bust (Willis v. Courtois, 1 Beav. 195, Stroud's Judicial Dictionary, p. 897).

A bequest of household stuff will not comprise "apparel, books, weapons, tools for artificers, cattle, victuals, corn, Plow-geere and the like." (Shepheard's Touchstone, p. 447.)

Tenant's fixtures in a leasehold house are not "Household Furniture" (Finney v. Grice, 48 L.J. Ch. 247, 10 C.D. 13, and Re Seton-Smith, 71 L.J. Ch. 386); but see Peto v. Grissell, 5 L.J. Ch. 286 and Paton v. Sheppard, 10 Sim. 186.

As to meaning of furniture see Newsome v. County of Oxford, 28 O.R. 442, and in re Holden, 5 O.L.R. 156.

As to "Furniture" not including text books or books of practice, see Re Local Offices of the High Court, 12 O.L.R. 16, nor a safe, see Goldie v. Taylor, 2 Terr. L.R. 298. As to "household furniture" including books, see in re Holden *supra.*

The word "furniture" is one of a very broad signification, and, according to lexicographers, embraces all suitable, necessary, convenient or ornamental articles with which a residence is equipped. (Alsup v. Jordan, 5 Am. St. Rep. 53.)

In the case last cited, it was held that a piano might be exempt if used in the family as an article of furniture and for the purpose of teaching music to the children thereof. It has, however, been held that a piano is not an article of household furniture. (Kehl v. Dunn, 47 Am. St. Rep. 561.)

Under the Law of Distress Amendment Act, 1888 (Imp.) "bedding" has been held to include a bedstead. (Davis v. Harris (1900), 1 Q.B. 729.)

"The expression 'household furniture' must be understood to mean those vessels, utensils or goods which, not becoming fixtures, are designed in their manufacture originally and chiefly for use in the family as instruments of the household and for conducting and managing household affairs." (Towns v. Pratt, 66 Am. Dec. 726.)

Where the household furniture to which a debtor is entitled as exempt by statute is limited by value only, the furniture exempt "may be pictures hung upon the walls or other furniture, or mere ornaments, or bedroom furniture for visitors only, or bedroom furniture, tableware, etc., for paying guests, boarders, etc." "The word 'furniture' is a comprehensive term embracing about everything with which a house or anything else can be furnished. It evidently means everything with which the residence of the debtor is furnished." (Rasure v. Hart, 18 Kan. 344, cited in Freeman on Executions, at p. 231.)

XIII. HORSES, COWS, WAGONS

In many of the statutes there are specific exemptions of horses (Manitoba, Saskatchewan, Alberta, Quebec),

cow (Manitoba, Saskatchewan, Alberta, Quebec, Nova Scotia, Prince Edward Island), and wagons (Saskatchewan and Alberta), quite apart from their possible exemption as tools or implements or chattels ordinarly used in a trade, profession or occupation.

In Ontario a horse ordinarily used in the debtor's occupation, not exceeding in value $60, is a "chattel" within the Act, and is therefore not liable to seizure. (Davidson v. Reynolds, 16 C.P. 140.)

In Quebec the exemption from seizure under execution of a horse and harness, etc., can be invoked only by a carter or one who uses the horse to gain a living, and not by a butcher who keeps the horses and uses them in his trade. (Lecavalier v. Brunelle, 8 Que. P.R. 245.)

A horse, the only exigible personalty of defendant, was taken in execution. It was appraised at $1,000. Defendant, under sec. 2, H. A. Act. 1890, c. 20, providing—"2. It shall be the duty of every sheriff or other officer seizing the personal property of any debtor under a writ of *fieri facias*, or any process of execution, to allow the debtor to select goods and chattels to the value of $500 from the personal property so seized," claimed that he was entitled to select the horse to the extent of $500, and to be paid that amount by the sheriff out of the proceeds of its sale. Held that the debtor was so entitled. (Vye v. McNeill, 3 B.C.R. 24.)

In states where a very liberal construction is given to the exemption law, it is held that a thing which is essential to the use of exempt property is itself exempt; thus in Texas a horse has been held to include his saddle and bridle and also the rope by which he was led, on the grounds that the grant in the statute must include not only the subject itself, but everything absolutely essential to its beneficial enjoyment. (Cobbs v. Coleman, 14 Tex. 599.)

The value of a horse is to be determined upon the whole evidence and not by an exclusive reference to the price it brought at a bailiff's sale. This is one, but merely one, test of its value. All experience proves that it is by no means a highly satisfactory test. It is but seldom that articles put up at a bailiff's sale realize their fair price. (McMartin v. Hurlburt, 2 O.A.R. 146.)

In Quebec a contractor who uses a horse in his business is not a carter, and cannot as such oppose the seizure of the horse in execution. The law does not allow the privilege of protection from seizure of two horses or two oxen except to a farmer, the cultivation of whose farm is his principal occupation. (McManamy v. Pelletier, 24 Que. S.C. 127.)

In Quebec when a horse, carriage and harness are the only ones of their several kinds which the defendant, who is a carter, has for earning his livelihood, they will be exempt from attachment. (Butler v. Prevost, 7 Que. P.R. 465.)

In Quebec the exemption from seizure of a horse and vehicle can be invoked only by a carter or one who uses the horse and vehicle to gain his living, and not by a carpenter, who is sometimes a contractor and sometimes a foreman, at the same time hiring out his horse and vehicle. (St. Lambert Lumber Co. v. Lambert, 10 Que. P.R. 259.)

In Quebec an opposition to the seizure of a horse by the defendant on the ground "that he is the agent of a company dealing in gas fixtures, that he installs the same and that the said horse is necessary to him to carry on his business," will be dismissed, the opposant being neither a carter nor a coachman. (Rousseau v. Nadeau (1909), 10 Que. P.R. 351.)

Statutes which exempt horses have been held to include mules and jack-asses within their meaning; and a statute which exempts a mule to the debtor includes within its

meaning an ass, which the debtor uses for farm work. (18 Cyc. 1412.)

A heifer is a young cow and as such exempt from attachment, if the debtor has no other (Johnson v. Babcock, 8 Allen 583), but a yearling heifer was held not to be exempt under a statute exempting two cows and a calf. (Mitchel v. Joyce, 69 Iowa 122.)

In Seminary, Etc., v. Cabana (1910), 11 Que. P.R. 315, it was held that, although the debtor was not a farmer, he had the right to claim that his cow, which had been seized, was exempt.

Where it appears that a debtor is not possessed of any ordinary farm wagon but has two buggies, one of these buggies is exempt as a "wagon" under the Exemptions Ordinance, and the debtor has the choice of buggies. (Per Stuart, J., Ashcroft v. Hopkins, 2 Alta. L.R. 253.)

The usual interpretation confines the term "wagon" as used in the provision for exemption to a vehicle which is suitable for the transportation of goods. Hence a buggy is held not exempt from execution. (18 Cyc. 1414.)

A hearse has been held to be a wagon. (Spikes v. Burgess, 65 Wis. 428.)

The term "wagon" is intended to mean a common vehicle for the transportation of goods, wares or merchandise of all descriptions. A hackney coach used for the conveyance of passengers is a different article and does not come within the equity or literal meaning of the act. (Quigley v. Gorham, 63 Am. Dec. 139.)

A bicycle is not a wagon. (Shadewald v. Phillips, 72 Min. 520.)

Necessary provisions means provisions of such a quantity as a provident man would ordinarily keep on hand. (Ward v. Gibbs, 30 S.W. 1125.)

It does not seem clear whether fodder for animals not possessed at date of execution, is exempt or not.

Where a statute exempts specific animals *in numero*, their number is not doubled when ownership in them is of an undivided half of each. (White v. Capron, 52 Vt. 634.)

XIV. CLOTHING.

The necessary and ordinary wearing apparel (Ontario); the necessary and ordinary clothing (Alberta, Saskatchewan, The North-West Territories and Manitoba), the necessary wearing apparel (Nova Scotia and Prince Edward Island), the ordinary wearing apparel (Quebec), and the wearing apparel inclusively with other exemptions up to $100 (New Brunswick), the necessary wearing apparel (Newfoundland) of the debtor and his family are exempt from execution.

It is supposed that the common law exemption of wearing apparel, when actually being worn, is not interfered with by these enactments.

The word "necessary" has been given a liberal construction, and it would appear that in the result it does not matter much whether the exemption be of necessary clothing, or of clothing *simpliciter*. There does, however, seem to be some slight distinction between the word "clothing" and "apparel" as in the case of Brown v. Edmonds quoted *infra*, both words were used in the exemption statute and the court came to the conclusion that "apparel" must mean, under the circumstances, something more than "clothing."

For another case of "wearing apparel" being construed as meaning more than "clothing," see Crichton v. Symes, 3 Atk. 61; and as to variation in meaning of "wearing apparel" arising from circumstances and climate, see Wensky v. Canadian Development Co., 8 B.C.R. 190; 21 C.L.T. 601.)

"We think the word 'necessary' was not intended to denote those articles of furniture only which are indispensable to the bare subsistence of the persons for whose benefit the law was designed, the debtor and his family. According to such a limited construction it would exclude many things which universal usage and the common understanding of that word in reference to this subject have pronounced to be necessary articles of household furniture, and would indeed protect merely those rude contrivances which are used only in a savage state. The word was obviously used in a larger sense; it was intended to embrace those things which are requisite in order to enable the debtor not merely to live, but to live in a convenient and comfortable manner." (Montague v. Richardson, 63 Am. Dec. 173.)

A fur overcoat for a man of certain age and of a certain social position is an ordinary garment necessary and indispensable during the winter season and therefore is exempt from seizure under Art. 589 C.P.C. (Robertson v. Honan, 24 Que. S.C. 510.) A right of retention claimed by one who has repaired such a coat does not authorize a creditor to seize it under execution.

"Necessary wearing apparel" includes cloth put into the hands of a tailor to be made into clothes for the debtor; and it has been held that "necessary wearing apparel" will include the trimmings as well as the cloth left in the hands of a tailor for such a purpose. (18 Cyc. 1426.)

Whether an article attached is a necessary or a luxury may under some circumstances be a question for the jury, depending upon the situation of the debtor and the character and uses and perhaps the cost of the article. (Towns v. Pratt, 66 Am. Dec. 726.)

"The wearing apparel" necessary for immediate use "must be such an amount of clothing as is necessary to meet the varying climate and customary habits and ordinary

necessities of the mass of the people. The clothing worn by the individual while about his daily toil might be all that was necessary for the time, but be wholly insufficient when the labor ceased, and the clothing suitable and proper for days of labor might not be such as the common sentiment of the community would deem necessary for use on days set apart for religious assembling and worship." (Peverly v. Sayles, 10 N.H. 356.)

"Watches are as essential to the comfort and convenience of men in nearly all vocations as are hats or coats. In many they are absolute necessities. We are inclined to hold the defendant's watch and chain absolutely exempt as wearing apparel." (Brown v. Edmonds, 50 Am. St. Rep. 762.)

A watch is an article for which exemption has been claimed under various provisions of the statutes of exemption. Thus it has been held to be exempt as necessary household furniture, as a working-tool and as wearing apparel. We think the better rule is that it is not exempt in either capacity. (Freeman on Execution, 1239.)

XV. VALUE OF CHATTELS EXCEEDING LIMIT OF EXEMPTION.

The right of exemption of chattels up to a certain value has led to considerable diversity of opinion. Thus, in British Columbia, a debtor has been held entitled to the proceeds of sale of a valuable chattel up to the statutory value, but in England, under a similar statute, to the whole of a chattel of a greater value than the statutory limit; while in U.S.A. the debtor has been held in such a case not to be entitled to any exemption.

In Ontario, if any tool or implement of or chattel ordinarily used in the debtor's occupation is of a value greater than $100 and there are not other goods suffi-

cient to satisfy the writ, such article may be sold by the sheriff, who shall pay $100 to the debtor out of the proceeds.

The other question is whether the section, which excepts from seizure implements of trade "to the value of five pounds," gave protection to this cab, which was admittedly worth more than £5, but which was the only chattel upon the premises. In my opinion the section means that implements of trade must be left on the premises to at least the value of £5. There is nothing to shew that that limit of value can in any case be disregarded. In order to give effect to the argument of the defendant, it would be necessary to hold that in such a case as this no tools or implement of trade whatever were protected from seizure—a conclusion which would be obviously inconsistent with the language of the section. In Churchward v. Johnson, 54 J.P. 326, where this was incidentally referred to, it was held that a sewing machine, as being an implement of trade, was within the protection of the section, though its value was stated to be £8 10s. I have come to the conclusion that, though the implement of trade here in question exceeds £5 in value, yet, as it is the only chattel on the premises, it is within the protection afforded by the Act." (Per Alverstone, L.J., in Lavell v. Richings, 75 L.J.K.B. 287.)

I further agree that the limit of value fixed by the section applies not only where the implements of trade upon the premises do not exceed that limit, but also where the only chattel upon the premises is an implement of trade which does exceed that limit and there is not means of severing it so as to take only the part of it which is in excess of the limit. In such a case the only course is to leave the chattel alone, for if it were seized the Act would clearly be infringed. (Per Darling, J., in S.C.)

A horse, the only exigible personalty of defendant, was taken in execution. It was appraised at $1,000. Defendant, under sec. 2, Homestead Amendment Act, 1890, c. 20, providing that "it shall be the duty of every sheriff or other officer seizing the personal property of any debtor under a writ of *fieri facias*, or other process of execution, to allow the debtor to select goods and chattels to the value of $500 from the personal property so seized," claimed that he was entitled to select the horse to the extent of $500, and to be paid that amount by the sheriff out of the proceeds of its sale. It was held that the debtor was so entitled. (Vye v. McNeill, 3 B.C.R. 24.)

It has been held that where the statute permits the debtor to hold as exempt an article of a designated value and the article of the class named owned by him is of greater value and not capable of division into parts, that the debtor is neither entitled to retain the article on tendering to the officer its value above the amount exempt, nor to have such amount paid to him from the proceeds of the sale. (Waldo v. Gray, 12 Ill. 184.)

XVI. PROCEEDS OF EXEMPT PROPERTY.

The proceeds of an involuntary disposition of property are themselves exempt, but the proceeds of a voluntary disposition are not exempt until they have been reinvested in other exempt property before a creditor has acquired a charge upon them. (Massey Harris Co. v. Schram, 5 Terr. L.R. 338; Slater v. Rodgers, 2 Terr. L.R. 210; Pilling v. Stewart, 4 B.C.R. 94.) It is not quite clear as to whether a debtor who has sold exempt property with the express purpose of re-investing in other exempt property can claim exemption for the proceeds of sale (See Cullen v. Harris, 66 Am. St. R. 380, where it was held that the exemption could be maintained.)

The same principle is applicable to a sum of money received on account of the loss of or damage to exempt property where such loss or damage has occurred without any acquiescence on the part of the owner. Thus it has been held that money recovered as damages for the conversion of exempt property is itself exempt (Harrell v. Harrell, 77 Ga. 130), and it also has been held that the claim for damages for the loss of or injury to an animal due to the negligence of another person cannot be taken in execution.

If the house on a homestead is burnt down and the owner has it insured the insurance money is exempt from seizure, and he is entitled to receive the same to restore his home. (Osler v. Muter, 19 O.A.R. 94.)

The natural increase of exempt animals has been held not to be exempt (Citizens' Nat. Bank v. Green, 78 N.C. 247); but their produce has been held to be exempt (Leavitt v. Metcalf, 2 Vt. 342, 19 Am. Dec. 718).

XVII. INSURANCE MONEY.

By statute it is settled in Manitoba that any moneys that may become payable by reason of loss by fire under any policy of fire insurance in respect of any property, that is at the time of such loss exempt from seizure, are exempt from seizure under execution or attachment or any other legal process. The principle underlying this statutory provision is probably applicable to the other jurisdictions. (Jones v. Jesse, 10 W.L.R. 627.)

It is considered right that this description of property should be left to a debtor for the support of himself and his family and to be free from the claims of creditors.

If he die, they remain exempt with his widow or family and they are free also if he become an absconding debtor. He remains, however, liable to have exempted articles seized for a debt contracted for their purchase.

When he insures such goods, he obtains an indemnity if destroyed by fire, and it appears to be but reasonable that such indemnity when recovered shall stand in the place of exempted goods to enable him to replace the articles properly protected by the statute.

Here if the company had exercised their right to replace these goods the exemption would at once apply. If the indemnity money secured by the thrift of the debtor can be intercepted by execution, the whole object of indemnity to the debtor under the statute and his care in securing such indemnity are lost. (Per Hagarty, see J.O., in Osler v. Muter, 19 O.A.R. 94.)

XVIII. FRAUDULENT CONVEYANCES.

A transfer of exempt property cannot, except under peculiar circumstances, be held to be fraudulent as against creditors, inasmuch as the transfer, no matter what the intention of the transferor was, could not operate to defraud the creditors, since it would not place beyond their reach anything which they would be entitled to take under execution, (Field v. Hart, 22 O.A.R. 449; Bates v. Cannon, 18 Man. L.R. 7; Temperance Insurance Co. v. Coombe, 28 C.L.J., 88.)

It is not a fraud on creditors for a debtor to use personal property which is subject to legal process to acquire or improve a homestead which is exempt. (Washburn on Real Property, s. 603.)

For a case where a transfer of exempt property might be regarded as fraudulent, see Scheuerman v. Scheuerman, 10 W.W.R. 379, and see generally Scott on Homesteads, 39.

Even if a conveyance were set aside as fraudulent the title to the property would not re-vest in the debtor, so as to give him any right to exemption.

It is not fraudulent to reserve out of an assignment for the benefit of creditors such property as is exempt from execution. (See Robinson v. Huston, 4 Man. L.R. 71.)

A chattel mortgage, although given under circumstances entitling a creditor to have it set aside as a fraudulent preference under s. 41 of The Assignments Act, R.S.M. 1902, c. 8, will nevertheless be held valid as to any goods covered by it which would under s. 29 of The Executions Act, R.S.M. 1902, c. 58, be exempt from seizure under execution. (Bates v. Cannon, 18 Man. L.R. 7.)

An execution debtor can do as he pleases with the statutory exemptions, and his execution creditor cannot take advantage of the fact that they are insufficiently described in a bill of sale thereof by the execution debtor. (Field v. Hart, 22 O.A.R. 449.)

The debtor has an absolute *jus disponendi* over the exemptions. He is not compelled to keep them in his possession in order that they should retain the character of exemptions. If sold, he is entitled to the proceeds in money, which he can deal with as he likes, and after his death his widow has the same right as he himself had. At common law a debtor has a right to prefer his creditor. A preference is fraudulent only by virtue of the statute, and the plaintiff cannot be placed in any better position than if the chattels had remained in the debtor's hands. There can be no fraudulent transfer of chattels which in no case could be reached by execution. (Temperance Ins. Co. v. Coombe, 28 C.L.J. 88.)

A chattel mortgage given by a debtor on a wagon which is exempt will not be set aside at the instance of a creditor, even if it is proved that the chattel mortgage was given under circumstances which would, except for the exemption, constitute a fraudulent preference under the Assignments Act. (Ashcroft v. Hopkins, 2 Alta. L.R. 253.)

An assignment for the benefit of creditors contained the following clauses: Provided always that the said trustee shall have power and authority, if he shall deem it expedient and for the general benefit of the creditors, from time to time and as often as he shall deem it proper out of the proceeds of the sales of the said stock to purchase goods and stock for the purpose of enabling him to assort and sell off the present stock to the best advantage for the benefit of the creditors, but such purchase shall be made with such view only and not with a view of continuing the business beyond a reasonable time . . . Provided also that the said party of the first part, notwithstanding anything herein contained, shall have the right and privilege if he so elects within a reasonable time to reserve to himself out of the goods and chattels and property hereinbefore conveyed and assigned such property as would be exempt from seizure under execution according to the laws of the Province of Manitoba." Under these circumstances it was held that the assignment was not, by reason of these clauses, void as against creditors. (Robinson v. Huston, 4 Man. L.R. 71.)

"In 'Burrell on Assignments' it is said at the end of section 202: "The reservation of such property as is exempt by law from levy and sale under execution is consistent with the rights of creditors"; and at section 96 it is said: "There are, however, portions of a debtor's property which the law expressly exempts from the process of creditors, and these, of course, he is allowed to except and retain out of the general conveyance."

"In Mulford v. Shirk, 26 Penn. St. 473, such a reservation was objected to as rendering an assignment void. The statute in that state exempted from levy and sale property to the amount of $300. The court, holding that the reservation was not fatal to the assignment, said: "We think not, and that because such a reservation is not within the reason

of the rule. Though expressed in the assignment it is not created by it, but by the Act of Assembly, and it does not tend to defeat or delay or hinder creditors, because by law they never could appropriate this part of their debtor's estate. In all the adjudged cases the reserved interest which has been held to avoid the assignment springs from the instrument itself, but in this case it is created by Act of Parliament and vested in the debtor, and the whole effect of the reservation is that he does not part with it. His creditors are not hindered by his keeping that which they had no right to touch."

This decision was followed in Heckman v. Mesinger, 49 Penn. St. 465, and approved of in Blackburne's Appeal, 39 Penn. St. 160, in which the court held that the debtor not having made the exception of exempt property, he could not afterwards reclaim it. (Robinson v. Huston, 4 Man. L.R. 71.)

XIX. LOSS OF EXEMPTION BY AN ABSCONDING DEBTOR.

In Manitoba the statutory exemption cannot be claimed by or on behalf of a debtor who is in the act of removing with his family from the province, or is about to do so, or who has absconded taking his family with him. (R.S.M. 1913, s. 33, c. 66.)

In Alberta and Saskatchewan the statutory exemptions cannot be claimed where the debtor has absconded or is about to abscond from the Territories leaving no wife or family behind (The Exemptions Ordinance, s. 66.)

The wording of the Manitoba provision does not make it quite clear whether or not absconding from the province, or absconding generally, is the disabling fact.

An absconding debtor, under 33 and 34 Vict., c. 76, seems to be an insolvent debtor who "departs for distant countries before the necessary proceedings can be taken to make him a bankrupt."

In R. v. Angelo, 5 W.W.R. 1303, Irving, J.A., says the word means to remove oneself for the sake of not being discovered by those with whom we are acquainted; and Martin, J.A., says that the word abscond has different legal meanings, and according to the context may imply that the absconder has fled the country to foreign parts or (e.g., in the case of certain sections of the English Bankruptcy Acts) that he has "departed from his dwelling house for the purpose of delaying his creditors and escaping payment of his debts, without leaving England in which country he was in fact in R. v. Judge of the North Allerton County Court rightly held to have been arrested as an absconder. (1898) 2 Q.B. 680, 68 L.J.Q.B. 24.

XX. RIGHTS UPON DEATH OF JUDGMENT DEBTOR.

In Ontario exempt chattels after the death of the debtor are exempt from the claims of his creditors, and his widow is entitled to retain for the benefit of herself and his family or, if there is no widow, the family of the debtor is entitled to them (The Execution Act, s. 6.)

In Manitoba the exemption has been held not to continue after death so as to prevent an order for the sale of the homestead being made in favor of a creditor who recovers a judgment against the executor and that although the widow and children are resident upon the land. (London & Canadian Loan Agency Co. v. Connell, 11 Man. L.R. 115).

In Alberta and Saskatchewan the exempt property is exempt from seizure under execution against the personal representative, if it is in the use and enjoyment

of the widow and children or widow or children of the deceased and if necessary for the maintenance and support of the said widow and children or any of them (The Exemptions Ordinance, s. 5.)

In Re Conlin Estate, 7 W.W.R. 187, it was held that the proceeds of sale of a homestead must be held to be exempt from liability for the debts of the deceased and applicable to the exclusive use of the widow and children, who were in the occupation of the homestead.

In Re Tatham, 2 O.L.R. 343, Meredith, C.J., held that goods of a deceased husband, exempt from seizure under The Execution Act, Ontario, were not, except as to funeral and testamentary expenses, assets in the hands of his executors for the payment of debts, the effect of s. 4 of that Act being to give his wife a parliamentary title thereto.

(See further as to meaning of "family," "child," "maintenance," and the rights of creditors upon the death of the judgment debtor, Scott on Homesteads, p. 45.)

The plaintiffs recoverd a judgment against the defendant as surviving executor of the estate of one William Kines, and under rule 804 of The Queen's Bench Act, 1895, applied for an order for the sale of a parcel of land vested in the defendant as such executor. The widow and minor children of Kines were living on the land.

Held that sec. 12 of The Judgments Act, R.S.M., c. 80, which provides that no proceedings shall be taken under any registered judgment against the land upon which the judgment debtor or his family actually resides or which he cultivates, would not apply so as to prevent the sale of the land in question, as neither the defendant nor his family resided upon or cultivated it. (London & Canadian Loan Agency Co. v. Connell, 11 Man. L.R. 115.)

XXI. ESTOPPEL.

A judgment debtor may be estopped from asserting his claim to exemptions, where he has made representations to the contrary or acted in such a way as to lead others to believe that he had waived his right.

The plaintiffs sued to recover a balance due for a threshing outfit sold and delivered by the plaintiff company to defendants, Charles Hornby and his wife, Ellen Hornby, under a written agreement signed by defendants which provided that promissory notes were to be given on approved security for the amounts payable at the dates mentioned. When the machinery had been delivered at the defendants' farm, the plaintiffs' agent called there to take settlement for it. Defendants then signed the notes asked for and the agent demanded a lien on the farm as security for the notes, and, relying on the representations of both defendants then made that the wife owned the land, accepted a lien on the land for the amount, signed by Mrs. Hornby in the presence of her husband, and did not insist, as he might have done, that the husband should also sign it. It appeared that the title to the land was then actually in the husband, and had remained so ever since.

Renewal notes had been given by the defendants and the original periods of credit considerably extended, and during this time the husband wrote several letters in which the wife was spoken of as the actual owner.

The chief contention at the trial was as to whether the plaintiffs were entitled to a lien on the land for the debt as against the defendant, Charles Hornby.

Held, there was ample consideration for the giving of the lien, as the plaintiffs might have removed the machinery and refused to carry out the transaction if it had been refused.

It was held that the defendant, Charles Hornby, was estopped by the representations he had made, and subsequently repeated, from denying that the land in question was his wife's property and from claiming it as his own as against the plaintiffs. (John Abell Co. v. Hornby, 15 Man. L.R. 450.)

The ordinary principles of such estoppel are here inserted for convenience of reference.

One recognized proposition as to *estoppel in pais* is that, if a person by words or conduct wilfully endeavors to cause another to believe in a certain state of things which such person knows to be false, and if the other believes in such state of things, and acts upon his belief, he who knowingly made the false statement is estopped from averring afterwards that such a state of things did not, in fact, exist.

Another recognized proposition as to *estoppel in pais* is that if a person, either in express terms or by conduct, makes a representation to another of the existence of a certain state of facts which he intends to be acted upon in a certain way, and it be acted upon in that way in the belief of the existence of such a state of facts to the damage of him who so believes and acts, such person is estopped from denying the existence of such a state of facts.

A third recognized proposition as to *estoppel in pais* is that if a person, whatever his real meaning may be, so conducts himself that a reasonable man would take his conduct to mean a certain representation, and that he was intended to act upon it in a particular way, and if he with such belief does act in that way to his damage, such person is estopped from denying that the facts were as represented.

A fourth recognized proposition as to *estoppel in pais* is that, if the transaction itself which is in dispute, A. has led B. into the belief of a certain state of facts by conduct of culpable negligence calculated to have that result, and such

culpable negligence has been the proximate cause of leading and has led B. to act by mistake upon such belief to his prejudice, A. cannot be heard afterwards as against B. to shew that the state of facts referred to did not exist. (Carr v. London and North-Western Railway, 44 L.J.C.P. 109.)

If at the time of the levy a debtor denies ownership of the property, he is held to be estopped from subsequently claiming the right to exemption. (Gilleland v. Rhoades, 34 Pa. St. 187.)

So also, it was held that if a debtor voluntarily surrendered property without making a claim, he was subsequently estopped from making it. (Richards v. Haines, 30 Iowa 574.)

It has been held that where false representations to obtain credit had been made, the person making the representation is estopped from subsequently claiming the exemption. (Blount v. Medbury, 94 N.W. 428.)

In order that a plea of estoppel may be effective to prevent a debtor from claiming his exemption it must appear that because of fraud, perjury, or false representation, the party urging the estoppel has been induced to act and to place himself in a position wherein he would not otherwise have placed himself, and where it would be inequitable for the defendant to deny his former representations or to disprove his former assertions whether under oath or not.

If a debtor conveys his property to delay or defraud creditors he cannot sustain an action for it as exempt because he has parted with the title and cannot urge his own fraudulent design for the purpose of defeating his deed. If, however, the conveyance should be vacated for fraud the exemption rights would revive. (Freeman, p. 1130.)

As to property exempt under the Homestead Laws, it is perfectly clear that an execution sale against the objections and in defiance of the right of the claimant conveys no title

whatever and it seems to be pretty well settled that this rule is applicable to other exempt property. (Freeman, p. 1133.)

(See Scott on Homestead, '44, for unreported case of Brock v. Morton, where it was held that the doctrine of estoppel did not apply to exemptions.)

In Angell v. Johnson, 33 Am. Rep. 152, it was said: "We are of opinion the debtor cannot stand by and know the levy is about to be made and afterward claim the exemption. He must at the time in some manner indicate to the officer his purpose to claim the property as exempt."

XXII. WAIVER.

The right of exemption may be waived but (*semble*) not in advance (nor at all in Manitoba, see R.S.M. 1913, c. 66, s. 29), that being against public policy.

In Roy v. Fortin *supra* the borrowing of goods by the debtor from an assignee for the benefit of creditors was held to be a waiver of the right to claim such goods as exempt through recognition of the title of the assignee, while another judge in the same case held that the very making of the assignment operated as a waiver of the right.

Exemption is not an absolute right, but a privilege which may be waived, and where debtors assigned all their property that might be seized and sold under execution, it was held that by the form of the assignment the privilege had been waived. (In re Ley and others, 7 B.C.R. 94.)

If the debtor's delay to claim his exemption arises from the fact that he is absent from the jurisdiction, no waiver of the right of exemption can be inferred from such delay. (See Harrington v. Smith, 20 Am. St. Rep. 272, in which case the debtor had written to his creditor asking for delay until he could "come down and fix up everything satisfactory.")

"The statutes which allow a debtor being a householder and having a family for which he provides to retain as against the legal remedies of his creditors, certain articles of prime necessity to a limited amount, are based upon views of policy and humanity, which would be frustrated if an agreement like that contained in these notes, entered into in connection with the principal contract, could be sustained. A few words contained in any note or obligation, would operate to change the law between those parties, and so far disappoint the intentions of the legislature. If effect shall be given to such provisions it is likely that they will generally be inserted in obligations for small demands, and in that way the policy of the law will be completely overthrown. Every honest man, who contracts a debt, expects to pay it, and believes he will be able to do so without having his property sold under execution. No one worthy to be trusted would, therefore, be apt to object to a clause subjecting all his property to levy on execution, in case of non-payment. It was against the consequences of this overconfidence, and the readiness of men to make contracts, which may deprive them and their families of articles indispensable to their comfort, that the legislature has undertaken to interpose. When a man's last cow is taken on an execution, on a judgment rendered upon one of these notes, it is no answer to say that it was done pursuant to his consent, freely given, when he contracted the debt. The law was designed to protect him against his own improvidence in giving such consent. The statutes contain many examples of legislation based on the same motives. The laws against usury, and those which forbid imprisonment for debt, and those which allow a redemption after the sale of land on execution, are of this class. So, of the principle originally introduced by courts of equity, and which has been long established in all courts, to the effect that if one convey land

as security for a debt, and agree that his deed shall become absolute, if payment is not made by the day, he shall be entitled to redeem, on paying the debt and interest; and so, also of executory contracts without consideration to make gifts and the like. In these cases the law seeks to mitigate the consequences of men's thoughtlessness and improvidence; and it does not, I think, allow its policy to be evaded by any language which may be inserted in the contract. It is not always equally careful to shield persons from those acts which, instead of being promissory in their character and prospective in their operation, take effect immediately. One may turn out his last cow on execution, or may release an equity of redemption, and he will be bound by the act. In thus discriminating the law takes notice of the readiness with which sanguine and incautious men will make improvident contracts, which look to the future for their consummation, when if the results were to be presently realized, they would not enter into them at all. If with the consequences immediately before them, they will do the act, they will not generally be allowed to retract, it being supposed in such case, that valid reasons for the transaction may have existed and that at all events the party was not under the illusion which distance of time creates. Ordinarily, men are kept to their executory, as well as their executed contracts; but in a few exceptional cases, where the temptation is great, or the consequences peculiarly inconvenient, parties are not allowed to make valid prospective agreements. The present is, in my opinion, one of those cases." (Kneettle v. Necomb, 22 N.Y. 249.)

Such contracts contravene the policy of the law and hence are inoperative and void. The owner may, if he chooses, sell or otherwise dispose of any property he may have, however much his family may need, but the law will

not aid him in that regard, nor permit him to contract in advance, that his creditor may use the process of the courts to deprive his family of its benefit and use when an exemption has been created in their favor. Laws enacted from considerations of public concern and to conserve the general welfare, cannot be abrogated by mere private agreement. (Recht v. Kelly, 25 Am. Rep. 301.)

It may be doubted how far the head of a family is entitled to waive his rights to exemption, at any rate in those jurisdictions where the right to exemption may be presumed to be conferred upon a man and his family.

The rule to be gathered from the majority of the reported cases on the subject is: That the mere surrender of property to an officer, or the execution of a bond for its surrender to him does not estop the debtor from subsequently claiming such of the property as may be exempt. (Freeman, p. 1123.)

XXIII. IMMOVABLES DECLARED EXEMPT. GIFTS ON CONDITION OF EXEMPTION.

XXIV. ALIMENTARY ALLOWANCES. ALIMENTARY DEBTS.

In Quebec the following are exempt from seizure: Immovables declared by a donor or testator, or by law, to be exempt from seizure; and sums of money or objects given or bequeathed upon the condition of their being exempt from seizure, and also alimentary allowances granted by a court, and sums of money or pensions given as alimony, even though the donor or testator has not expressly declared them to be exempt from seizure. They may, however, be seized for alimentary debts.

Property which is the subject of a gift upon condition that the donee shall not alienate it, is not exigible under

execution or other process against the donee. (Roberts v. Bergevin, 16 Que. K.B. 104.)

Although a clause prohibiting seizure in a deed of gift of an immovable property cannot prevent the sale of the property, yet it is an obstacle to such property being charged with a judicial hypothec resulting from registration (with required notice) of a judgment rendered against the donee. Hence by an action directed against the creditor who registered such judgment, the donee may have such hypothec erased. (Latour v. Latour (1909), 38 Que. S.C. 193.)

A condition of inexigibility under which a thing is given cannot be extended to another thing, hence, a piano acquired with the proceeds of the insurance of a similar instrument destroyed in a fire and which had been given on condition of exemption from seizure is exigible. (Alexander Milling Co. v. Cloutier (1909), 36 Que. S.C. 196.)

Immovables, sums of money or objects given upon the condition of their being exempt from seizure, as provided in par. 3 of Art. 599 C.P., may, nevertheless, be seized in satisfaction of an alimentary debt. The costs and expenses attending a suit instituted by a universal usufructuary legatee but without calling into question either the possession, the enjoyment, the creation or the preservation of such usufruct, which is alleged to be exempt from seizure, do not create an alimentary debt, because they were not useful either for the material existence of the object given or bequeathed, or of that of the person who received the gift or legacy. A legatee, upon whom a seizure is effected for costs of the nature of those stated, has a right to obtain a discharge from the attachment by garnishment under the provision of pars. 3 and 4 of Art. 599 C.P. *Quære*, do objects declared exempt from seizure by the donor become, at the donee's death, liable thereto, with retroactive effect in

such a way that all of the donee's creditors acquire the right to seize them? (Drainville v. Savoie and Rouleau (1910), 16 R.L.N.S. 505.)

A judgment allowing damages to the father for the killing of his son is not in the nature of an alimentary allowance, and the amount of these damages can be seized, if they have not been declared exempt from seizure. (Leroux v. James dit Carriere, 11 Que. P.R. 13. *Sub nom.* James v. Leroux and Vulcan Portland Cement Co., 16 R.L.N.S. 20.)

An indemnity granted to a father for the death of his son who, he alleges had been his only support, and allowed by a Court in a suit for damages taken by the father against the party responsible for his son's death, partakes of the nature of "alimentary allowances granted by a Court," under the provisions of Art. 599 C.P., and is, therefore, exempt from seizure. (Carriere v. Leroux (1909), 19 Que. K.B. 249, 11 Que. P.R. 158.)

Property the subject of a gift with a provision for *insaisissabilite* is exigible for an alimentary debt. (Patenaude v. Boissoneault, 10 Que. P.R. 258.)

An alimentary allowance, created by an onerous deed of gift, is seizable. (Biron v. Biron (1910), 16 R.L.N.S. 386, 16 R. de J. 418.)

An order for alimony is not subject to the provisions of the Lacombe Law, and defendant's salary may be attached therefor. (Desormeau v. Legault and Peck Rolling Mills Co. (1910), 11 Que. P.R. 328.)

The amount which the party responsible for the death of another is condemned to pay to the latter's surviving father and mother, by virtue of article 1056 C.C., is an alimentary allowance granted by a Court, within the meaning of art. 599 (4) C.P., and is exempt from seizure. (Leganiere v. Desjardins and Great Northern Railway Co. (1909), 37 Que. S.C. 513.)

XXV. CONSTRUCTION OF EXEMPTING STATUTES.

It has been held that statutory exemption from seizure being in derogation of the rights of creditors under the general law is to be strictly construed. (Harris v. Rankin, 4 Man. L.R. 135; London & Canadian Loan and Agency Co. v. Connell, 11 Man. L.R. 151; Kraemer v. Gless, 10 U.C.C.P. 475, and re Hetherington, 14 W.L.R. 529.)

It must be remembered that in many of the jurisdictions (e.g., British Columbia and Alberta) there is a provision that every enactment should be deemed remedial and that consequently there is not the same necessity for a strict construction.

In Washburn on Real Property, at s. 544, it is said that exemption laws, whatever may be said of their policy, are not in derogation of common law, but are simply restrictive of statutes passed in derogation of the common law.

(See further, as to view taken in U.S.A., Scott on Homesteads, 11.)

Statutes conferring exemptions or privileges in derogation of the general law must be construed strictly, so that the protection of sec. 12 does not continue after the death of the judgment debtor, although his widow and children may be living upon the property; and *a fortiori* no exemption can be claimed when the judgment in question is recovered against the executor of the deceased debtor. (London and Canadian Loan and Agency Co. v. Connell, 11 Man. L.R. 115.)

When a class of property is exempt, such as suitable apparel, bedding, tools, arms and articles of household furniture, such as may be necessary for upholding life, the courts take care that the beneficial purposes of the legislature are carried into execution, but when a specific article is

exempt, the court cannot extend the statute by construction to another and different article. (Carty v. Drew, 46 Vt. 346.)

XXVI. POINTS OF PLEADING AND PRACTICE.

A deed of assignment of the estate and effects of insolvents for the benefit of their creditors, executed on March 26th, 1896, pursuant to the Creditors' Trust Deeds Act, 1890, excepted "such personal property as may be selected by the said debtors under the Homestead Act and Homestead Amendment Act, 1890.". It was held that the *onus* was on the claimants to show that the claim was not within the exception to the right of exemption provided by sec. 10 of the Homestead Act, 1890, as amended by the Act of 1893, sec. 2, in regard to goods seized in "satisfaction of a debt contracted for or in respect of such identical goods," and in the absence of evidence upon the point the claim was disallowed. (Sehl v. Humphreys, 1 B.C.R. Pt. 2, 257.)

In an action or proceeding to enforce or establish an exemption right, the burden is upon him who seeks to enforce or establish it. The claimant of exemption has the burden to show that he has fulfilled the statutory requirement as to steps taken to obtain his exemption, such as demand and furnishing a schedule. (18 Cyc. 1494.)

Where in an interpleader issue the claimant alleges that the goods seized include the statutory exemptions that is a question for trial in the issue and is not to be left to the sheriff to deal with. (Field v. Hart, 22 O.A.R. 449.)

A sheriff sued in the county court by an execution debtor for $100 damages, the value of implements seized and sold by the sheriff without any special direction from the execution creditor and elleged to be exempt, cannot obtain in that court an interpleader order directing the trial of an issue

between the execution debtor and the execution creditor, to settle whether the implements were exempt or not. The sheriff acts at his own peril in granting or refusing the exemption. (In re Gould v. Hope, 20 O.A.R. 347.)

In British Columbia the sheriff's costs of seizure and possession money are payable by the execution debtor claiming the exemption, which is a privilege arising only when claimed. (Sehl and Humphreys, 1 B.C.R. Pt. 2, 257.)

A workman who demands the withdrawal from a seizure of his necessary tools, cannot claim costs against the execution creditor, because the bailiff making the seizure cannot make the distinction between tools which the debtor may claim as exempt and his other tools. (Cunningham v. Guilbault, 6 Que. P.R. 75.)

When an execution debtor declares he has no goods and the execution creditor does not contest this statement, the execution debtor has an absolute right to a replevin by the execution creditor; this replevin is equivalent to a preemption against execution; the execution creditor must pay the costs of the motion to protect it from the execution debtor. (Henri v. Beaucage (1909), 10 Que. P.R. 409.)

A magistrate sitting as judge of the Small Debts Court has no jurisdiction to decide the validity of a claim of exemption, under the Homestead Act, of goods seized under process of execution issued from that Court. (Auberg v. Anderson; Stewart v. Anderson, 5 B.C.R. 622.)

23 Vic., c. 25, exempting certain articles from seizure, does not bind the Crown. Semble, that the statute does not apply where the debtor has absconded, leaving the goods with his family. (Regina v. Davidson, 21 U.C.Q.B.R. 41.)

Where goods of the plaintiff were seized under execution, and she filed an opposition alleging that the notices of sale and the advertisements of the seizure were irregular, and that certain of the goods seized were exempt, the execu-

tion debtors were granted an order declaring the opposition maintained, and allowing them to proceed to sell the goods seized other than those claimed as exempt, upon giving new and regular notices of sale. (Jean v. De Marchi, 2 Que. P.R. 442.)

The allegation that the effects seized are all relating to and used by opposant in his profession, and as such are exempt from seizure, is sufficient, and this opposition will not be dismissed as frivolous and vexatious on a motion to that effect. (Thompson v. Buchan, 8 Que. P.R. 246.)

ALBERTA AND SASKATCHEWAN

An Ordinance Exempting Certain Property From Seizure and Sale Under Execution

The Lieutenant-Governor, by and with the advice and consent of the Legislative Assembly of the Territories, enacts as follows:

SHORT TITLE

1. This Ordinance may be cited as "The Exemptions Ordinance," C.O., c. 27, s. 1.

EXEMPTIONS

2. The following real and personal property of an execution debtor and his family is hereby declared free from seizure by virtue of all writs of execution, namely:

1. The necessary and ordinary clothing of himself and his family;

2. Furniture, household furnishings, dairy utensils, swine and poultry to the extent of five hundred dollars;

3. The necessary food for the family of the execution debtor during six months which may include grain and flour or vegetables and meat either prepared for use or on foot;

4. Three oxen, horses or mules or any three of them, six cows, six sheep, three pigs and fifty domestic fowls besides the animals the execution debtor may have chosen to keep for food purposes and food for the same for the months of November, December, January, February, March and April or for such of these months or portions thereof as may follow the date of seizure, provided such seizure be made between the first day of August and the thirtieth day of April next ensuing;

5. The harness necessary for three animals, one wagon or two carts, one mower or cradle and scythe, one breaking plough, one cross plough, one set of harrows, one horse rake, one sewing machine, one reaper or binder, one set of sleighs and one seed drill;

6. The books of a professional man;

7. The tools and necessary implements to the extent of two hundred dollars used by the execution debtor in the practice of his trade or profession;

8. Seed grain sufficient to seed all his land under cultivation not exceeding eighty acres, at the rate of two bushels per acre, defendant to have choice of seed, and fourteen bushels of potatoes;

9. The homestead, provided the same be not more than one hundred and sixty acres; in case it be more, the surplus may be sold subject to any lien or encumbrance thereon;

10. The house and buildings occupied by the execution debtor and also the lot or lots on which the same are situate according to the registered plan of the same to the extent of fifteen hundred dollars C.O., c. 27, s. 2.

GENERAL.

3. The execution debtor shall be entitled to a choice from the greater quantity of the same kind of articles which are hereby exempted from seizure. C.O., c. 27, s. 3.

4. Nothing in this Ordinance shall exempt from seizure any article except for the food, clothing and bedding of the execution debtor and his family, the price of which forms the subject matter of the judgment upon which the execution is issued. C.O., c. 27, s. 4.

5. In case of the death of the execution debtor, his property exempt from seizure shall be exempt from seizure under execution against his personal representative, if the said property is in the use and enjoyment of the widow and

children or widow or children of the deceased and is necessary for the maintenance and support of the said widow and children or any of them. C.O., c. 27, s. 5.

6. The provisions of section 2 hereof shall not apply to any case where the debtor has absconded or is about to abscond from the Territories leaving no wife or family behind nor to an execution issued upon a judgment or order for the payment of alimony. C.O., c. 27, s. 6; 1901, c. 16, s. 1.

BRITISH COLUMBIA.

Homestead Act, 1911, R.S.B.C. 100.

2. In the construction of this Act—

"Homestead" means and shall include the pieces or parcels of land, together with any erections or buildings thereon, whether leasehold or freehold, or both leasehold and freehold, with their rights, members and appurtenances, which shall be duly registered as a homestead in manner hereinafter mentioned, and any erection or building, on any such homestead as aforesaid, whether or not the same be affixed to the soil, shall be taken to be real estate and part of such homestead;

"Debtor" shall include the personal representative of the debtor, if the debtor be dead, and shall also, in case of the absence of the debtor, include any member of his household.

3. Nothing in this Act contained shall be construed as exempting any real or personal property from sale for taxes or from distress for rent.

17. The following personal property shall be exempt from forced sale or sale by any process at law or in equity; that is to say, the goods and chattels of any debtor at the

option of such debtor, or, if dead, of his personal representative, to the value of five hundred dollars: Provided that nothing herein contained shall be construed to exempt any goods or chattels from seizure in satisfaction of a debt contracted for or in respect of such identical goods or chattels: Provided further, that this section shall not be construed so as to permit a trader to claim as an exemption any of the goods and merchandise which form a part of the stock in trade of his business.

18. It shall be the duty of every sheriff or other officer seizing the personal property of any debtor under a writ of *fieri facias*, or any process of execution, to allow the debtor to select goods and chattels to the value of five hundred dollars from the personal property so seized; and every debtor whose personal property has been seized as aforesaid may, within two days after such seizure or notice thereof, whichever shall be the longest time, select goods and chattels to the value of five hundred dollars from the personal property so seized, and thereupon, if a list of the selected articles shall not have been deliverd to the sheriff or other officer by the debtor, the sheriff or other officer shall make a written list thereof, a copy of which he shall give to the debtor; and the sheriff or other officer shall forthwith, if in his opinion the goods and chattels so selected do not exceed in value the sum of five hundred dollars, withdraw from possession of the same, and the same shall be, and such sheriff or other officer shall certify in writing thereof that they are, the goods and chattels exempt under the last preceding section of this Act.

19. Should such sheriff or other officer be of the opinion that the goods and chattels selected by such debtor exceed in value the sum of five hundred dollars, he shall within one day after the receipt or making of the list referred to in the last preceding section, notify such debtor to that effect in

writing, and shall (unless within one day more such sheriff or other officer and such debtor agree upon the goods and chattels to be exempt, not to exceed in value the sum of five hundred dollars) without delay call upon a Justice of the Peace resident in the locality, who shall at once name an appraiser, whose duty it shall be to appraise, and who shall, when sworn, without delay appraise the selected goods and chattels in the presence of the debtor, or after one day's notice to him, to be served either personally or tacked up in some conspicuous place where the seized goods are situate; and when a claim to exemption has been made, and has been admitted or agreed upon as aforesaid, or when the goods claimed have been selected and appraised under or at the sum of five hundred dollars, such sheriff or other officer shall withdraw from possession of the same, and the same shall be, and such sheriff or other officer shall certify in writing that they are, the goods and chattels exempt under section 17 of this Act. R.S. 1897, c. 93, s. 19.

20. If the goods claimed by the debtor are appraised at more than five hundred dollars. then the appraiser shall (the debtor still being allowed his option if he claims it) appraise so much of the claimed goods as shall not exceed five hundred dollars, and the goods so appraised at five hundred dollars shall constitute and be certified as the exempt goods. R.S. 1897, c. 93, s. 20.

21. If the goods claimed shall be appraised at a sum exceeding five hundred dollars, then the fees of the appraiser, not to exceed five dollars, and his expenses of travel for the distance actually and necessarily travelled by him, not to exceed fifty cents a mile one way, shall be levied out of the exempted goods; and if the goods shall be appraised at five hundred dollars only, or at a sum less than five hundred, then the sheriff or other officer shall pay the fees and mile-

age of the appraiser as aforesaid, but in the latter case, the sheriff or other officer may deduct the sum so paid the appraiser from the proceed of execution (if any) against goods not exempt.

22. Every appraiser under this Act shall, before acting as such, take and subscribe the following oath before any person duly authorized to administer an oath, or in the absence of any such person, then before any sheriff or sheriff's officer, who is hereby authorized to administer the same:

I, A.B., having been appointed the appraiser of goods and chattels seized under an execution (or as the case may be), in the suit of
against (or as the case may be), do solemnly swear (or affirm) that I will faithfully perform the duties of the said office without partiality, fear, favor or affection, and that I will appraise the value of the goods and chattels submitted to my appraisement, to the best of my ability. So help me God.

A. B.,

Appraiser under Homestead Act.

Sworn before me at
this day of 19

J.P.

(or as the case may be)

23. The debtor may appeal from the decision of the appraiser, or from any act of the sheriff or other officer, to the nearest County Court Judge, upon giving such security for the appeal as the County Court Judge may order, and the appeal shall be decided summarily by the County Court Judge without delay.

MANITOBA.

Revised Statutes of Manitoba, 1913, c. 66.

29. Except as otherwise by any Act provided, the following personal and real estate are hereby declared free from seizure by virtue of all writs of execution issued by any Court in this Province, namely:

(a) The bed and bedding in the common use of the judgment debtor and his family, and also his household furniture and effects, not exceeding in value the sum of five hundred dollars.

(b) The necessary and ordinary clothing of the judgment debtor and his family, and the necessary fuel for the judgment debtor and his family for six months.

(c) Twelve volumes of books, the books of a professional man, one axe, one saw, one gun, six traps.

(d) The necessary food for the judgment debtor and his family during eleven months, but this exemption shall only apply to such food and provisions as may be in his possession at the time of seizure.

(e) Three horses, mules or oxen, six cows, ten sheep, ten pigs, fifty fowls, and food for the same during eleven months.

Provided, that the word "horses" shall include colts and fillies, the words "oxen" and "cows" shall include steers and calves and heifers respectively; and

Provided also, that the exemption as to horses over the age of four years shall apply only in case they are used by the judgment debtor in earning his living.

(f) The tools, agricultural implements and necessaries used by the judgment debtor in the practice of his trade, profession or occupation to the value of $500.

(g) The articles and furniture necessary to the performance of religious services.

(j) All the necessary seeds of various varieties or roots for the proper seeding and cultivation of eighty acres.

(l) The chattel property of any municipality or school district in this Province, where the writ of execution issued after the 1st of January, 1911.

30. Any moneys that may become payable by reason of loss by fire under any policy of fire insurance in respect of any property that is at the time of such loss exempt under this Act from seizure, shall be exempt from seizure under execution or attachment or any other legal process.

31. The property and interest of an annuitant or of any person interested or entitled in or to any contract for an annuity, or any annuity itself, under the Act of the Parliament of Canada known as "The Government Annuities Act, 1908," and under any Act or Acts amending the same, or that may be substituted therefor, or in or to any moneys payable or paid under or by reason of any such contract or annuity, shall be exempt from seizure, levy or attachment by or under the process of any court, and shall not be affected by any trust, charge or lien: Provided, however, that nothing in this Act contained is intended to conflict or be inconsistent with any enactment or provision of the said "The Government Annuities Act, 1908," or the amendment made thereto in 1909. 10 Ed. 7, s. 24, s. I.

32. A partnership firm cannot claim several exemptions for each partner, but only one exemption for the firm out of the partnership property.

33. The exemptions in this Act mentioned cannot be claimed by or on behalf of a debtor who is in the act of removing with his family from the Province, or is about to do so, or who has absconded, taking his family with him.

34. The judgment debtor shall be entitled to a choice from the greater quantity of the same kind of property or articles which are hereby exempted from seizure.

35. It is hereby declared that, with the exception of the land, to the extent of one hundred and sixty acres, upon which the defendant or his family actually resides, or which he cultivates either wholly or in part, or which he actually uses for grazing or other purposes, none of the above mentioned exemptions of property or articles from seizure or sale under executions affected, applied to, affect or apply to executions issued to enforce judgments recovered upon debts due or accruing due under or by virtue of any act, contract or obligations done, entered into or undertaken before the second day of May, in the year 1885, or to enforce judgments recovered before said last mentioned date, save only in so far as any of the same may have been exempt under any law in force in this Province previous to the said last mentioned date. R.S.M., c. 54, s. 47.

36. When the execution is issued upon a judgment, recovered wholly or partly for a debt, obligation or liability due or accruing due before the second day of March, in the year 1894, only such property shall be exempt from seizure thereunder for the amount recovered in respect of such debt, obligation or liability, and the interest thereon recovered or leviable as was exempt from seizure under execution immediately before said last above mentioned date. 3-4 Ed. 7, c. 15, s. 1.

37. Nothing herein contained shall be construed to exempt from seizure any real or personal estate mentioned in paragraphs (a), (c), (e), (f), (g), (h), (i), (j) and (k) of Section 29 of this Act, the purchase price of which is the subject of the judgment proceeded upon either by way of execution or certificate of judgment or attachment.

38. No sale of any farm or garden crops, whether grain or roots, shall take place until after the same have been harvested or taken or removed from the ground.

40. No sheriff, sheriff's bailiff, County Court bailiff, or other officer, charged with the execution of any writ of execution issued out of any court in Manitoba shall seize or take in execution any goods, chattels or effects declared by this Act to be free from seizure under writs of execution. R.S.M., c. 58, s. 39.

41. Every agreement to waive or abandon an exemption from seizure or a benefit right or privilege or exemption from seizure under this Act and every arrangement, contract or bargain, verbal or written, under seal or otherwise, made or entered into with or without valuable consideration, whereby an attempt is made to prevent any person from claiming the benefit, right or privelege of exemption under this Act, shall be absolutely null and void: Provided, however, that this section shall not give rise to any inference or implication that such agreement, arrangement, contract or bargain was not heretofore void.

NEW BRUNSWICK.

The Memorial and Execution Act (Consolidated Stats. N.B. 1903, c. 128.)

34. The wearing apparel, bedding, kitchen utensils, and tools of his trade or calling to the value of $100.00 of any debtor shall be exempt from levy or sale under execution.

ONTARIO.

The Execution Act.

1. This Act may be cited as "The Execution Act."

2. In this Act—

(a) "Execution" shall include a writ of *fieri facias* and every subsequent writ for giving effect thereto.

(b) "Sheriff" shall include any officer to whom an execution is directed.

3. The following chattels shall be exempt from seizure under any writ issued out of any court, namely:

(a) The bed, bedding and bedsteads, including cradles in ordinary use by the debtor and his family.

(b) The necessary and ordinary wearing apparel of the debtor and his family.

(c) One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one pair of handirons, one set of cooking utensils, one pair of tongs and a shovel, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishing, six towels, one looking-glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, twelve knives, twelve forks, twelve plates, twelve teacups, twelve saucers, one sugar basin, one milk jug, one teapot, twelve spoons, two pails, one washtub, one scrubbing brush, one blacking brush, one washboard, three smoothing irons, all spinning wheels, one weaving loom in domestic use, one sewing machine in domestic use and attachments, thirty volumes of books, one axe, one saw, one gun. six traps, and such fishing nets and seines as are in common use, the articles in this subdivision not exceeding in value $150.

(d) All necessary fuel, meat, fish, flour and vegetables actually provided for family use, not more than sufficient

for the ordinary consumption of the debtor and his family for thirty days and not exceeding in value $40.

(e) One cow, six sheep, four hogs and twelve hens, in all not exceeding the value of $100, and food therefor for thirty days, and one dog.

(f) Tools and implements of, or chattels ordinarily used in the debtor's occupation to the value of $100, but if a specific article claimed as exempt be of a value greater than $100 and there are not other goods sufficient to satisfy the writ, such article may be sold by the sheriff, who shall pay $100 to the debtor out of the net proceeds, but no sale of such article shall take place unless the amount bid therefor shall exceed $100 and the cost of sale in addition thereto.

(g) Fifteen hives of bees.

4. The debtor may, in lieu of tools and implements of or chattels ordinarily used in his occupation referred to in clause (f) of Section 3, elect to receive the proceeds of the sale thereof up to $100, in which case the officer executing the writ shall pay the net proceeds of the sale, if the same do not exceed $100, or, if the same exceed $100 shall pay that sum to the debtor in satisfaction of the debtor's right to exemption under clause (f).

5. The sum to which a debtor is entitled under clause (f) of Section 3 or under Section 4 shall be exempt from attachment or seizure at the instance of a creditor.

6. Chattels exempt from seizure shall, after the death of the debtor, be exempt from the claim of his creditors, and his widow shall be entitled to retain them for the benefit of herself and his family, or, if there is no widow, the family of the debtor shall be entitled to them.

7. The debtor, his widow or family, or in the case of infants, their guardian, may select out of any larger number the chattels exempt from seizure.

8. Nothing herein shall exempt any article enumerated in clauses (e) to (g) of Section 3 from seizure to satisfy a debt contracted for such article

QUEBEC.

The Code of Civil Procedure.

598. The debtor may select and withdraw from seizure;

1. The bed, bedding and bedsteads in use by him and his family;

2. The ordinary and necessary wearing apparel of himself and his family;

3. Two stoves and their pipes, one pot-hook and its accessories, one pair of andirons, one pair of tongs and one shovel;

4. All the cooking utensils, knives, forks, spoons and crockery in use by the family, two tables, two cupboards or dressers, one lamp, one mirror, one washing-stand with its toilet accessories, two trunks or valises, the carpets or matting covering the floors, one clock, one sofa and twelve chairs, provided that the total value of such effects does not exceed the sum of fifty dollars;

5. All spinning wheels and weaving looms intended for domestic use, one axe, one saw, one gun, six traps, such fishing nets, lines and seines as are in common use, one tub, one washing-machine, one wringer, one sewing machine, two pails, three flat-irons, one blacking brush, one scrubbing brush, one broom;

6. Fifty volumes of books, and all drawing and painting executed by the debtor or the members of his family, for their use;

7. Fuel and food sufficient for the debtor and his family for three months;

8. One span of plough-horses or a yoke of oxen, one horse, one summer vehicle and one winter vehicle, and the harness used by a carter or driver for earning his livelihood, one cow, two pigs, four sheep, the wool from such sheep, the cloth manufactured from such wool, and the hay and other fodder intended for feeding the said animals; and, moreover, the following agricultural tools and implements; one plough, one harrow, one working sleigh, one timbril, one hay-cart with its wheels, and all harness necessary and intended for farming purposes;

9. Books relating to the profession, art or trade of the debtor, to the value of two hundred dollars;

10. Tools and implements or other chattels ordinarily used in his profession, art or trade to the value of two hundred dollars;

11. Bees to the extent of fifteen hives;

12. The things mentioned in Articles 1743 to 1748 of the Revised Statutes and their amendments.

Nevertheless, the things and effects mentioned in Paragraphs 4, 5, 6, 7, 8, 9 and 10 are not exempt from seizure and sale when the suit is to recover the price of their purhase, or when they have been given in pawn. C. C. P. 556, amended; R. S. 5917; 52 Vic. c. 50, s. 3; 53 Vic., c. 58, c. 1. (C. P. 645, 861, 870—C. C. 1980.)

599. (As amended by 62 V. c. 53, s. 1.) The following are exempt from seizure:

1. Consecrated vessels and things used for religious worship;

2. Family portraits;

3. Immovables declared by a donor or testator, or by

law, to be exempt from seizure; and sums of money or objects given or bequeathed upon the condition of their being exempt from seizure;

4. Alimentary allowances granted by a court, and sums of money or pensions given as alimony, even though the donor or testator has not expressly declared them to be exempt from seizure. They may, however, be seized for alimentary debts;

5. All vessels, boats and other fishing craft, tackle, nets, seines, lines, or other fishing apparatus, and provisions belonging to any fisherman, and necessary for his subsistence and that of his family or for his fishing operations. Such effects may, however, be seized and sold for their purchase price, but not between the first day of May and the first day of November;

6. Pay and pensions of persons belonging to the Army or to the Navy;

7. Contingent emoluments and fees due of ecclesiastical and ministers of worship by reason of their current services and the income of their clerical endowment;

8. The salary of professors, tutors and school teachers;

9. Salaries of public officers; with the exception of public officers and employees of the Province, whether permanent or not, which are seizable for;

(a) One-fifth of every monthly salary not exceeding one thousand dollars per annum;

10. Salaries of city or town clerks in incorporated cities or towns, except as to the proportions mentioned in Paragraph 9;

11. All other salaries and wages, at whatever time and in whatever time and in whatever manner payable, for,

(a) Four-fifths, when they do not exceed three dollars per day; and,

(b) Three-quarters, when they exceed three dollars but do not exceed six dollars per day; and,

(c) Two-thirds, when they exceed six dollars per day.

12. Books of account, titles of debt and other papers in the possession of the debtor, except as mentioned in Article 641.

641. Debentures, promissory notes, whether negotiable or not, shares in corporations and other instruments payable to order or to bearer, bank notes included, may be seized like all other moveable effects belonging to the debtor.—C. C. P. 565, in part amended. (C. P. 599, 912, 666, 677, 595—C. C. 1573.)

13. All pensions given by institutions, financial or other, to their employes as retiring allowances, or pension funds established among the employes and the contributions paid or to be paid to form such funds and to give a right to the advantages flowing from them. (New, in part, C. C. P. 558, amended; 556 ex. 5 part. R. S. 5918, 52 V. C. 50 s. 4; 54 V. C. 12, s. 2, C. P. C., 628, first amended R. S. 593.) 54 V. C. 12, s. 3; C. C. P. 632 part; 557 (C. P. 645, 697, 722, 861, 870—C. C. 1190, s. 3, 1911, 1980.)

(See also R. S. 3611 and 3705.)

(It is thought best to retain here the statutory provisions as to attachment of salaries, etc., though not within the scope of this book.)

NOVA SCOTIA

(Rev. St. 1900, c. 155, 340)

40. The following goods and chattels shall be exempt from seizure under any writ of execution, namely:

(a) The necessary wearing apparel, beds, bedding and bedsteads of the debtor and his family.

(b) One stove and pipes therefor, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs, six knives, six forks, six plates, six teacups, six saucers, one shovel, one table, six chairs, one milk jug, one teapot, six spoons, one spinning wheel, one weaving loom, one sewing machine, if in ordinary domestic use, ten volumes of religious books, one water bucket, one axe, one saw, and such fishing nets as are in common use, the value of such nets not to exceed twenty dollars;

(c) All necessary fuel, meat, fish, flour and vegetables actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of forty dollars;

(d) One cow, two sheep and one hog, and food therefor for thirty days;

(e) Tools and implements of, or chattels ordinarily used in the debtor's occupation, to the value of thirty dollars;

But nothing in this rule contained shall exempt any article enumerated in (b), (c), (d) and (e) from seizure in satisfaction of a debt contracted for such identical article.

NEWFOUNDLAND

By statute the following property of an execution debtor is free from seizure: The working tools and implements of trade of any person, his fishing skiff or punt, the necessary cooking apparatus, bedding and wearing apparel of himself and his family. The share or wages of a sealer are not liable to attachment under mesne or final process except for supplies advanced to him to be paid for out of his share of the proceeds of the voyage.

(This resume is taken from that prepared by John Fenelon St. John's of the Middle Temple and Newfoundland Bar for "The Canada Legal Directory.")

PRINCE EDWARD ISLAND

Under execution from the Supreme Court:

"All necessary wearing apparel and bedding of the debtor and his family and the tools and implements of his trade or occupation to the value of $50, sixteen dollars in money and one cow" (14 v., c. 2, s. 15).

Under execution from the County Court:

"Wearing apparel and bedding of the debtor and his family. Tools and implements of his trade, 1 cow and 1 cooking stove, in all amounting to the value of $50" (14 v., c. 12, s. 67).

This information was kindly supplied by W. A. V. Morson, Esq., Prothonotary of the Supreme Court of Prince Edward Island.

TABLE OF CASES CITED

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